United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7235

United States Court of Appeals

For the Second Circuit

B

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Plaintiff-Appellant,

against

H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & Co., CHARLESTON INVESTMENT COMPANY, E.D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON and CHARLES W. COX,

Defendants-Appellees,

and

DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR, and D. TIPP CULLEN,

Defendants.

On Appeal from the United States District Court for the Southern District of New York

UNITED STATES COURT OF APPEALS
FILED
AUG 13 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Docket Entries	1
Complaint	6
Notice of Motion on behalf of New York Stock Exchange, Inc. for Stay Pending Arbitration	64
Notice of Motion on behalf of defendants H. Ross Perot, et al. for Stay Pending Arbitration	58
Affidavit of Peter Gruenberger, sworn to October 14, 1975, in Support of Motion for Stay Pending Arbitration	71
Exhibit A - Conformed Copy of Realignment Agreements	76
Exhibit B - Unreported Opinion: Hirsch v. F. I. duPont, Glore Forgan & Co., 11514/72 (N.Y. Sup. Ct. 1974)	285
Exhibit C - Unreported Opinion: Fraiman v. F. I. duPont, Glore Forgan & Co., 23712/72 (N.Y. Sup. Ct. 1973)	297
Exhibit D - Unreported Opinion: Klebanow v. Ira Haupt & Co., 1105/64 (N.Y. Sup. Ct. 1964)	302
Affidavit of Robert M. Bishop, sworn to October 13, 1975, in Support of Motion for Stay Pending Arbitration	309
Affidavit of Delia R. McQuade, sworn to October 13, 1975, in Support of Motion for Stay Pending Arbitration	313
Affidavit of George A. Davidson, sworn to October 29, 1975, in Opposition to Motion for Stay Pending Arbitration	315

	Page
Exhibit A - Letter from James F. Swartz, Jr. to George T. Thomson and Larry S. Glazer dated June 29, 1973; Memorandum from James F. Swartz, Jr. to Board of Directors of NYSE dated June 29, 1973	319
Exhibit B - Letter from J. Hamilton Crawford, Jr. to Daniel J. Cullen and Morton Meyerson dated July 6, 1973	324
Exhibit C - Complaint in Walston v. duPont Glore Forgan, Incorporated, Index No. 00625/74 (N.Y. Sup. Ct.)	328
Exhibit D - Complaint (Omitted, see p. 6)	341
Reply Affidavit of Peter Gruenberger, sworn to November 10, 1975, in Support of Motion for Stay	342
Exhibit E - NYSE Weekly Bulletin of March 15, 1974	348
Exhibit F - Letter Agreement dated February 27, 1974	349
Exhibit G - Letter dated October 27, 1975 from Bruce E. Baker to Duncan Jensby	352
Exhibit H - Unreported Opinion: In re Blair (Cahn), 70 B 755 (May 12, 1972, S.D.N.Y.) (Babitt, J.)	353
Exhibit I - Unreported Opinion: In re Blair (Cahn), 70 B 755 (September 6, 1972, S.D.N.Y.) (Brieant, J.)	361
Exhibit J - Unreported Opinion: In re Blair (Danford), 70 B 755 (June 1, 1973, S.D.N.Y.) (Babitt, J.)	367

	Page
Reply Affidavit of John J. Senkewich, sworn to November 7, 1975, in Support of Motion for Stay Pending Arbitration	393
Reply Affidavit of Peter J. Armstrong, sworn to November 5, 1975, in Support of Motion for Stay Pending Arbitration	394
Memorandum and Order of Judge Knapp filed February 6, 1976 staying the deposition of Lee B. Peterson	398
Memorandum Opinion and Order of Judge Knapp filed April 14, 1976 granting the Motions for Stay Pending Arbitration	400
Defendants' Notice of Settlement and Proposed Order staying the action	425
Order of Judge Knapp filed May 6, 1976 staying the action	430
Notice of Appeal	432
Memorandum and Order of Judge Knapp filed May 14, 1976 placing the case on the suspense calendar	434

CIVIL DOCKET JUDGE KNAPP

UNITED STATES DISTRICT COURT

1

75 CIV. 3214

Jury demand date:

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
208-1 75-3214 07-01-75 3 850 1	9999 0855 rg
ALLEGAERT, WINTHROP J., as Trustee of duPont Walston Incorporated pltff.	For plaintiff: Hughes Hubbard & Reed One Wall Street New York, N.Y. tele: Wh 3-6500
-vs-	
PEROT, H. ROSS ELECTRONIC DATA SYSTEMS CORPORATION duPONT GLORE FORGAN INCORPORATED GAYDEN, WILLIAM K. MEYERSON MORTON H. HART, III., MILLEDGE A. PEROT, MARGOT STAUFFER, MERVIN L. PHM & CO. CHARLESTON INVESTMENT COMPANY E.D. SYSTEMS CORPORATION NEW YORK STOCK EXCHANGE, INC. CULLEN, DANIEL J. FLEMING, WILLIAM D. THOMSON, GEORGE T. COX, CHARLES W. DeTATA, DOUGLAS E. DOUGHTY, JOHN J. BLAIR, ALLAN CULLEN, D. TIPP	For defendant: Weil, Gotshal & Manges 767 Fifth Avenue N.Y.C. 10022-PL 8-7800 Deft's duPont GloreForgan, PHM & Co. Milledge A. Hart, III, Morton H. Meyerso Electronic Data, E.D. Systems Corp. H. Ross Perot, Margot Perot, W.K. Gayden, M.L. Stauffer & Charleston Investment C Guggenheimer&Untermyer 80 Pine St. NY, NY 10005 344-2040 (Cullen, Fleming, Thomson & Cox) Lea, Goldberg & Spellun 120 B'way, N.Y.C. 10005 233-5205 for D. Tipp Cullen

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed x	Clerk	JUL 1 1975			
		8/27/76	70265	5	
		5/13/76	Theim		5 —
J.S. 6 mailed	Marshal				
Basis of Action: Viol. of SEC Act. of 1934-stock fraud.	Docket fee				
	Witness fees				
Action arose at:	Depositions				

8&4

75-3214 Judge Knapp Winthrop J. Allegaert etc. -vs- H. Ross Perot, et al. 75-

DATE	PROCEEDINGS	Date Ord Judgment
07-01-75	(1) Filed complaint and issued summons.	
07-25-75	(2) Filed Stip&Order extending time for defts to answer complaint to 9/15/75. Knapp,J.	
07-30-75	Filed stip & order that time of deft. N.Y. Stock exchange to answer complaint si ext. to 9-15-75. Knapp,J.	
07-31-75	Filed pltff's 1st set of interrogs.	
07-31-75	(5)Filed Pltff's 1st request for production of documents.	
07-31-75	(6) Filed Affdvt of Service by Howard F. Hart for pltff of 1st set of interrogs& 1st request for production of documents on Defts et al on 7/29/75 by mail	
08-15-75	(7) Filed summons & entered marshal's return, served on: (1) H. Ross Perot by H. Ross Perot 7-16-75 (2) Electronic Data Systems Corp. by H. Ross Perot 7-16-75 (3) duPont Glore Forgan Incorp. by T. Luce III 7-15-75 (4) Wm. Gayden by same 7-29-75 (5) M. Meyerson by same 7-16-75 (6) M. Hart III by same 7-16-75 (7) M. Perot by H. Ross Perot 7-16-75 (8) M. Stauffer by same 7-22-75 (9) PHM & Co. by H. Ross Perot 7-16-75 (10) Charleston Investment Co. unexecuted 8-5-75 (11) E.D. Systems Corp. by H. Ross Perot 7-16-75 (12) N.Y. Stock Exchange by E. Morris 7-9-75 (13) D. Cullen by same 7-31-75 (14) Wm. Fleming by E. Fleming 7-31-75 (15) C. Thomson by D. Thompson 7-16-75 (16) C. Cox by (left in mail box) 7-10-75 (17) D. DeTata by B. DeTata on 7-10-75 (18) J. Doughty by wife 7-8-75 (19) A. Blair by wife 7-21-75 (20) D. Cullen by same 8-2-75.	
09-11-75	(8)Filed Stip&Order extending time for deft.NY Stock Exchange,Inc. to answer to pltff's interrogs from 9/2/75 to 10/15/75;further stip.&ordared extending time for deft.NY Stock Exchange ,Inc. to answer pltff's request for production of documents from 9/25/75 to 10/30/75.Knapp,J.	
09-11-75	(9)Filed Stip&Order extending time for defts.Perot,Electronic Data Systems Corporation,duPont Glore Forgan Incorporated,Gayden,Meyerson,Hart,III, Margot Perot Stauffer,PHM&Co,Charleston Investment Company&E.D. Sustems Corporation to 9/15/75.Knapp,J.	
09-11-75	(10)Filed Stip&Order extending time for defts.Cullen,Fleming,Thomson&Cox to appear to 9/19/75 without waiving rights of any such deft to make any motion including motions directed at jurisdiction;time to answer to complaint to 10/15/75; time to answer pltff's 1st set of interrogs to 10/15/75&time to produce documents called for by pltff's 1st request for production of documents to 10/15/75.Knapp,J.	
09-11-75	(11) Filed Stip&Order extending time for deft.NY Stock Exchange,Inc.to answer complaint to 10/15/75.Knapp,J.	
9-18-75	(12) Filed Stip. & Order defts. D. DeTata,J. Doughty, & A. Blair to answer,etc. and pltff.'s first request for production of documents is ext. to 10-15-75.Knapp,J.	
9-18-75	(13) Filed certain deft's attys notice of appearance.	
09-22-75	(14) Filed stip & order that deftD.Tipp Cullen's time to answer complaint is ext. to 10-15-75, etc. Knapp,J.	
09-23-75	(15) Filed stip & order that time for deft. N.Y.Stock Exchange to answer pltff's first set of interrogs is ext. to 11-14-75. Knapp,J.	

(contd.pg.3)

75 Civ.3214 WINTHROP J.ALLEGAERT ETC.VS.H.ROSS PEROT ET AL
D. C. 110 Rev. Civil Docket Continuation
Pg.3

DATE	PROCEEDINGS
09-15-75	Filed Marshal's return.ServedCharleston Investment Co.by Robt Reed on 9/19/75
09-19-75	Filed Notice of appearance by attys for defts.Cullen,Fleming,Thomson&Cox.
10-09-75	(18) Filed deft. D. Tipp Cullen's no ice of appearance of atty. by Lea,Goldberg & Spellun 120 Bway.N.Y.C. 10005 233-5205.
10-16 75	(19)Filed deft's N.Y.Stock Exchange affidavit & notice of motion for a stay as to them ret.
10-16 75	(20)Filed deft's memorandum in support of his motion for a stay.
10-15-75	(21)Filed certain deft's affidavits & notice of motionfbor a stay, ret.
10-15-75	(22)Filed certain deft's memorandum in support of motion for a stay.
10-15-75	(23)Filed stip & order that time of deft's to answer pltff's first set of interrogs is ext. to 11-14-75 etc. Knapp,J.
10-15-75	(24)Filed stip & order that time of deft. D.Tipp Cullen to answer complaint is ext. to 10-15-75.Knapp,J.
10-17-75	(25)Filed pltff's notice to take deposition as witness of Geo.U.Robson
10-17-75	(26)Filed pltff's notice to take deposition of witness L.B.Peterson.
10-17-75	(27)Filed affidavit of service by mail by L.Cautin on 10-16-75.
10-17-75	(28)Filed affidavit of service by mail by L.Cautin on 10-16-75.
10-24-75	(29)Filed stip & order that time of certain deft's to answer complaint & respond to pltff's interrogs is ext. to ten days after the determination of motion by H.Ross Perot for a stay. Knapp,J.
10-24-75	(30)Filed stip & order that deft. D.Tipp Cullen's time to answer complaint & respond to pltff's interrogs & documents is ext. to ten days after the determination of the motion by H.Ross Perot & others for a stay. Knapp,J.
Oct.31-75	(31)Filed affidavit of Geo.A. Davidson in opposition to motion of deft. H.Ross Perot Re: arbitration.
Oct.31-75	(32)Filed pltff's memorandum in opposition to deft's motion Re: Arbitration.
Oct.31-75	(33)Filed affidavit of service by J.A.Calliahan upon parties as indicated.
Oct.31-75	(34)Filed pltff's memorandum in opposition to motion to stay the action as to deft. N.Y. Stock Exchange.
11-03-75	(35)Filed stip & order that two pending motions for a stay Re: arbitration ret.10-24-75 adj. to 11-7-75.
11-10-75	(36)Filed deft's Daniel J.Cullen,etal affidavit & notice of motion Re: expense of attendance of an atty ret.11-14-75.
11-10-75	(37)Filed deft's memorandum in support of motion ret.11-14 75.
11-10-75	(38)Filed deft's N.Y.Stock EXchange reply memorandum in support pff motion to stay the action to them.
11-10-75	(39)Filed deft's D.J.Cullen,etal memorandum in support of application for protective order.
11-10-75	(40)Filed certain deft's affidavit & show cause order Re: deposition ret. before Knapp,J.
11-10-75	----Filed Memo-endorsed on deft's show cause order. Motion withdrawn by leave of the court, on the bases of order & stip. of even dated. Knapp,J.
11-10-75	41 Filed stip & order that show cause order ret.11-7-75 is withdrawn. Knapp,J.
11-12-75	(42)Filed deft's D.E.Detata,etal affidavit & notice of motion Re: travel expenses ret.11-14-75.
11-11-75	(43)Filed reply affidavit of P.Gruenberger Re: arbitration.
11-11-75	(44)Filed reply memorandum by deft's in support of motion for stay .

Cont'd on page #4

75 Civ 3214 Winthrop J. Allegaert, as Trustee vs, H.Ross Perot,etal 75 C

DATE	PROCEEDINGS	Date C Judgme
11-12-75(45)	Filed deft's D.Tipp Cullen affidavit & notice of motion Re: deposition ret.11-14-75.	
11-12-75(46)	Filed deft's D.Tipp Cullen memorandum of law in support of his motion ret.11-14-75.	
11-10-75(47)	Filed Memo-endorsed on certain deft's show cause order filed 11-10-75 motion withdrawn, by leave of the court on the basis of order & stip of even date. So ordered. Knapp,J.	
11-11-75(48)	Filed stip & order that the two pending motions for stay ret. 11-7-75 adj. to 11-14-75. Knapp,J.	
11-13-75(49)	Filed Trustee's memorandum in opposition to motions for expensed.	
11-13-75(50)	Filed affidavit of G.A. Davidson in opposition to motions of eight deft's Re: fees.	
11-13 75(51)	Filed affidavit of service of J.A. Callahan of affidavit & memo. upon deft's on 11-13-75.	
11-17-75	---Filed Memo-endorsed on motion by deft's D.J.Cullen , etal filed 11-10-75 #36 Re: Expenses: Motion denied without prejudice for renewal as to expenses after the depositions. Knapp,J. m/n	
11-17-75	---Filed Memo-endorsed on deft. D.Tipp Cullen #45 motion filed 11-12-75. motion denied without prejudice to renewal as to expenses after the depositions. Knapp,J. m/n	
11-17-75	---Filed Memo-endorsed on deft's D.E.DeTata, etal motion filed 11-12-75 #42 Re: Travel expenses. Motion denied without prejudice to renewal as to expenses after the depositions. Knapp,J.	
12-05-75	Filed Pltff's Notice to take deposition of George U.Robson with Affdvt of Service by Mario A.Rosado of same on 12/4/75 upon Weil,Cotshal&Manges; Leva,Hawes, Sumington,Martin&Oppenheimer; Luce Hennessy Smith&Castle Carter Ledyard&Milburn Guggenheimer & Uneexmyer;Lea Goldberg&Spellun&Milbank Tweed,Hadley&McCloy for Mr.Ross Perot et al; for Electronic Data Systems Corp et al; Charleston Investment Co.et al;Douglas E.DeTata et al;Daniel J.Cullen Et al;D.Tipp Cullen; NY Stock Exchange Inc.	
12-05-75	Filed Pltffs Notice to take deposition of Lee B.Peterson.Affdvt of Service served by Mario A.Rosado upon listed defts attys as previously noted above	
12-07-75	Filed deft's affidavit & notice of motion Re: deposition of Lee B. Peterson ret. 1-9-76.	
12-07-75	Filed deft's memorandum in support of application ret.1-9-76.	
12-07-75	Filed affidavit of service by P.Fitzgerald by mail of motion .	
12-07-75	Filed affidavit of G.A.Davidson in opposition to motion of deft's Re: deposition.	
12-07-75	Filed pltff's memorandum in opposition to motion to delay deposition.	
01-08-76	Filed affidavit of G.A.Davidson in opposition to motion of deft's Re: deposition.	
01-08-76	Filed affidavit of James W.Rayhill in connection with motion of deft's Re: protective order.	
01-08-76	Filed deft.D.Tipp Cullen affirmation in connection with motion for protective order.	
01-14-76	Filed affidavit of H.J.Tashman in reply to ad hominem attach regarding supposed "delaying tactics".	
02-06-76	Filed Memo-Decision & Order #43851: The protective order is granted. & deposition of Peterson will be stayed pending disposition of the motion to compel arbitration.So ordered. Knapp,J. m/n	
04-14-76	Filed Memorandum & Order #44237: The motion for a stay & to compel arbitration, filed by the Perot group is granted. The motion of the NYSE to stay the proceeding as to it pending arbirration is also granted. Action is stayed as to the four non-moving deft's as well. Settle order on notice. So ordered. Knapp,J. m/n	

Cont'd Page #5

.75 Civ 3214 Winthrop J. Allegaert, as Trustee vs. H. Ross Perot, etal 75 Civ

DATE	Page #5 PROCEEDINGS

Knapp, J.

05-06-76 Filed Counter-Order that motion of deft's H.Ross Perot, etal that the trial of this action be stayed until arbitration of the claims asserted against them has been granted. The motion of the Exchange that the trial be stayed as to it pending any arbitration of the claims is granted, etc. Knapp, J. m/n

05-12-76 Filed pltff's notice of appeal to the USCA from order entered 4-14-76 & 5-6-76. Mailed notice to Milbank, Tweed, Hadley & McCloy - Weil, Gotshal & Manges-Leva, Hawer, Symington, Luce Hennessy Smith & Castle--Lea, Goldberg & Spellman, Guggenheimer & Untermyer-& Carter, Ledyard & Milburn.

05-14-76 Filed Memorandum & order, the case is placed on the suspense calendar pending the anticipated arbitration. So ordered. Knapp, J. m/n

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

D. C. 109 Criminal Continuation Sheet

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Plaintiff,

-against-

H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E. D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR, and D. TIPP CULLEN,

Defendants.

- x

75 Civ.

COMPLAINT

Winthrop J. Allegaert, as Trustee of duPont Walston Incorporated (the "Trustee"), by his attorneys, Hughes Hubbard & Reed, complaining of the defendants, alleges:

JURISDICTION

1. This action arises under Sections 6, 10(b), 20(a) and 29(b) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78f, 78j(b), 78t(a), and 78cc(b) (the "Exchange Act"); SEC Rule 10b-5 promulgated pursuant to Section 10(b) of the Exchange Act ("Rule 10b-5"); Sections 12(2), 15 and 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 771(2), 77o and 77q(a) (the "Securities

Act"); Sections 60(b), 67(d), 70(a) and 70(e) of the Bankruptcy Act, 11 U.S.C. §§ 96(b), 107(d), 110(a) and 110(e); Section 352-c of the New York General Business Law, Sections 720 and 1317 of the New York Business Corporation Law, Sections 273 through 276 of the New York Debtor and Creditor Law; Sections 144(a), 251(c) and 271(a) of the Delaware General Corporation Law; and the common law.

2. This court has jurisdiction pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 23(b) of the Bankruptcy Act, 11 U.S.C. § 46(b), and principles of pendent jurisdiction.

3. This court has personal jurisdiction over the defendants pursuant to, among other things, Section 27 of the Exchange Act, 15 U.S.C. § 78aa, Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Sections 301 and 302 of the New York Civil Practice Law and Rules ("CPLR"). Personal jurisdiction exists under CPLR Section 302 because the claims alleged herein arise from the facts that each of the defendants or their agents

(a) transacted business within the State of New York, or

(b) committed tortious acts within the State of New York, or

(c) committed tortious acts without the State of New York causing injury to duPont Walston Incorporated, also known as Walston & Co., Inc., within the state and at all relevant times (i) regularly did and solicited business or engaged in other persistent courses of conduct in the state or derived substantial revenue from goods used and consumed and services rendered in the state, or (ii) expected or should reasonably have expected such tortious acts to have consequences in the state and derived substantial revenue from interstate or foreign commerce.

THE PARTIES

4. Plaintiff Winthrop J. Allegaert is Trustee in Bankruptcy of duPont Walston Incorporated, formerly known as Walston & Co., Inc. ("Walston"). Plaintiff was appointed Trustee on May 29, 1974 by order of the Honorable Roy Babitt, Bankruptcy Judge, United States District Court for the Southern District of New York.

5. Walston is, and at all times hereafter mentioned was, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the City, County and State of New York. For many years prior to July 1973 Walston had carried on a general retail brokerage business and had been one of the largest firms in the brokerage industry.

6. Through a series of fraudulent, unauthorized and otherwise unlawful transactions beginning in or about July 1973, defendants caused many millions of dollars of Walston assets to be transferred to defendant duPont Glore Forgan Incorporated and others and caused many millions of dollars of duPont Glore Forgan Incorporated liabilities to be transferred to Walston.

7. As a result of these transactions, Walston was rendered insolvent. On March 27, 1974, Walston filed a petition for an arrangement under Chapter XI of the Bankruptcy Act, 11 U.S.C. §§ 701 et seq. On May 29, 1974, Walston was declared bankrupt.

8. Upon his appointment as Trustee, plaintiff was vested by Section 70a of the Bankruptcy Act, 11 U.S.C. § 110a, with title to all non-exempt property of Walston, including both property transferred by Walston in fraud of its creditors and choses in action.

9. Defendant Electronic Data Systems Corporation ("EDS") is, and at all times material hereto was, a corporation organized and existing under the laws of the State of Texas. EDS is in the business of designing, installing and operating computerized business information systems for corporate customers.

10. At all times material hereto, defendants H. Ross Perot ("Perot"), William K. Gayden ("Gayden"), Morton

H. Meyerson ("Meyerson") and Milledge A. Hart, III ("Hart") were members of the Board of Directors and major stockholders of EDS. Perot has been Chairman of the Board of Directors of EDS since he founded EDS in 1962 and at all times has been the owner of at least 62% of its common stock. At all relevant times, Gayden, Meyerson and Hart operated subject to the direction, dominion and control of EDS and acted as agents and instrumentalities of EDS with respect to the wrongful acts alleged hereinbelow.

11. Defendant duPont Glore Forgan Incorporated ("duPont Glore Forgan") is, and since May 1971 has been, a corporation organized and existing under the laws of the State of Delaware. At all times material hereto, duPont Glore Forgan maintained its principal place of business in the City, County and State of New York. From May 1971 until July 2, 1973 duPont Glore Forgan conducted a general retail brokerage business. duPont Glore Forgan was the successor to the business previously carried on by the partnership of F. I. duPont, Glore Forgan & Co. ("the duPont Glore Forgan partnership").

12. PHM & Co. ("PHM") is, and at all times material hereto was, a partnership formed by Perot, Gayden, Meyerson and Hart to hold the investments of themselves and others in duPont Glore Forgan.

13. Charleston Investment Company ("Charleston") is, and at all times material hereto was, a corporation organized and existing under the laws of the State of Delaware owned

entirely by Perot and his wife, Margot Perot ("Mrs. Perot"). Charleston was formed to hold the investments of Perot and Mrs. Perot in Walston.

14. E.D. Systems Corporation ("E.D. Systems") is, and at all times material hereto was, a wholly owned subsidiary of EDS formed to carry out the systems contract EDS had negotiated with Walston. At all relevant times, E.D. Systems operated subject to the direction, dominion and control of EDS and acted as an agent and instrumentality of EDS with respect to the wrongful acts alleged hereinbelow.

15. At all times material hereto, defendants Gayden and Mervin L. Stauffer ("Stauffer") were officers of Charleston. Pursuant to Charleston designations, Gayden became a member of the Walston Board of Directors and a member of its Executive Committee in November 1972 and Stauffer became a member of those bodies in May 1973. Gayden and Stauffer are sometimes hereinafter referred to as the "Nominee Directors".

16. At all times material hereto, defendants Gayden, Meyerson, Hart, EDS, duPont Glore Forgan, E.D. Systems, PHM, Charleston and Stauffer operated subject to the direction, dominion and control of Perot and acted as agents and instrumentalities of Perot with respect to the wrongful acts alleged hereinbelow. Perot, Gayden, Meyerson, Hart, EDS, duPont Glore Forgan, E.D. Systems, PHM, Charleston and Stauffer are sometimes hereinafter referred to as the "Perot Interests".

17. The New York Stock Exchange, Inc. (the "Exchange") is, and at all times material hereto was, a corporation organized and existing under the laws of the State of New York. The Exchange is a national securities exchange registered with the Securities and Exchange Commission pursuant to Section 6 of the Exchange Act. At all times material hereto, Walston and duPont Glore Forgan were member firms of the Exchange.

18. At all times material hereto, defendants Daniel J. Cullen, William D. Fleming ("Fleming"), George T. Thomson ("Thomson"), Charles W. Cox ("Cox"), John J. Doughty ("Doughty"), Douglas E. DeTata ("DeTata"), Allan Blair, and D. Tipp Cullen were members of the Walston Board of Directors and were active in Walston's business. These directors are sometimes hereinafter referred to as the "Defendant Directors".

19. At all relevant times, certain defendants were controlling persons of certain other defendants within the meaning of Section 15 of the Securities Act and Section 20(a) of the Exchange Act as follows:

(a) Perot was a controlling person of EDS, duPont Glore Forgan, Gayden, Meyerson, Hart, Stauffer, PHM, Charleston, and E.D. Systems.

(b) EDS was a controlling person of duPont Glore Forgan, Gayden, Meyerson, Hart, PHM, Charleston, and E.D. Systems.

(c) Gayden was a controlling person of EDS, duPont Glore Forgan, PHM, Charleston, and E.D. Systems.

(d) Meyerson was a controlling person of EDS, duPont Glore Forgan, PHM, Charleston and E.D. Systems.

(e) Hart was a controlling person of EDS, duPont Glore Forgan, PHM, Charleston, and E.D. Systems.

(f) Mrs. Perot was a controlling person of Charleston.

(g) Stauffer was a controlling person of Charleston.

(h) PHM was a controlling person of duPont Glore Forgan.

BACKGROUND OF OFFENSES CHARGED

20. Since its inception, EDS has derived most of its revenues from long term systems contracts with corporate customers under which it assumes total operating responsibility for the data processing systems of its customers for periods ranging from approximately five to eight years.

21. At the time Perot first invested in the brokerage industry, EDS stock had been trading at extraordinarily high multiples of earnings--more than 100 to 1. The Perot Interests knew that these price-earnings ratios reflected dramatic growth in EDS revenues and earnings; in each year from 1964 through 1969, EDS's net income for the year was more than double that of the year before.

22. The Perot Interests knew that if EDS failed to maintain significant earnings growth, the price of EDS stock--most of which was owned by Perot, Mrs. Perot, Gayden, Meyerson and Hart--would decline substantially.

23. To attempt to maximize its earnings, EDS had developed an "industry center" concept under which it sought to build systems suitable for the needs of an entire industry in conjunction with one or more pilot companies. Once the system was developed, EDS hoped to obtain contracts with other companies in the industry. EDS endeavored to employ this concept in the brokerage industry by obtaining a contract with the duPont Glore Forgan partnership.

TAKEOVER OF DUPONT GLORE FORGAN BY PEROT INTERESTS

24. On or about July 3, 1970, EDS entered into a long term systems contract with the duPont Glore Forgan partnership under which EDS was to provide all of the duPont Glore Forgan partnership's electronic data processing requirements for a period of eight years at a minimum average annual charge of $8,000,000. On the same date EDS entered into another agreement with the duPont Glore Forgan partnership to make a loan to the partnership in the form of a subordinated account for an amount in excess of $2 million.

25. Since EDS's after-tax net income was then running at approximately 15% of revenues, the $8,000,000

in annual revenues from the duPont Glore Forgan partnership could be expected to result in annual net income to EDS of approximately $1,200,000. At the price-earnings ratios for EDS stock then prevailing, the $1,200,000 of earnings would represent more than $100,000,000 in market value for EDS stock.

26. Beginning in about the fall of 1970, the duPont Glore Forgan partnership experienced a series of capital crises which threatened the continued existence of the firm. The liquidation of the duPont Glore Forgan partnership would have eliminated the substantial income accruing to EDS under its long term systems contract with the partnership and thereby would have adversely affected the price of EDS stock.

27. To prevent the collapse of the duPont Glore Forgan partnership and the consequent loss to EDS of continued earnings from its contract, Perot, Gayden, Meyerson and Hart invested substantial additional capital in the duPont Glore Forgan partnership and eventually acquired virtually 100% control of the firm. In taking full control of the firm, Perot, Gayden, Meyerson and Hart, acting through PHM, formed duPont Glore Forgan as a corporation to acquire the business of the duPont Glore Forgan partnership.

28. The Exchange contributed to this effort to salvage the duPont Glore Forgan partnership. Under an Indemnification Agreement dated May 14, 1971, the Special Trust Fund of the Exchange (the "Exchange Trust Fund") indemnified PHM against losses of up to $15,000,000 arising out of potential differences between the actual and recorded value of assets and liabilities of the duPont Glore Forgan partnership. The indemnity was effected through the Exchange Trust Fund's issuance to PHM of a non-interest bearing ten year note which was subject to a five year extension at the option of PHM. The dollar amount ultimately payable pursuant to the Exchange Note was dependent upon the outcome of a series of annual audits of the partnership's assets and liabilities. In April 1972, the Indemnification Agreement was amended to provide that the Exchange Trust Fund's obligation to pay for such losses would be accelerated to the time of any insolvency, liquidation or other marshalling of the assets of duPont Glore Forgan. As part of the indemnity arrangement, duPont Glore Forgan issued a Certificate of Special Interest (the "CSI") to the Exchange Trust Fund which entitled the Exchange Trust Fund to receive cash, securities or other consideration under certain circumstances. The Exchange Trust Fund's right to receive any distribution under the CSI, however, was subordinated to the rights of present and future creditors of duPont Glore Forgan.

29. As a part of the acquisition of the business of the duPont Glore Forgan partnership, duPont Glore Forgan assumed the partnership's contract with EDS. Thereafter, the contract between duPont Glore Forgan and EDS was modified several times. After these modifications, the contract was more profitable to EDS so that in the eleven months prior to July 1, 1973 EDS was earning profits of more than 30 per cent of revenues on the contract--more than double EDS's average rate of profitability on its systems contracts.

30. By July 1, 1973 the Perot Interests had invested more than $70 million in duPont Glore Forgan. Of this sum, $65 million consisted of borrowings by PHM from banks secured primarily by shares of EDS stock owned by Perot.

31. However, the Perot Interests were unsuccessful in operating the business of duPont Glore Forgan. From the time the Perot Interests formed duPont Glore Forgan to July 1, 1973, duPont Glore Forgan suffered huge operating losses. In the one year period ending May 31, 1973 duPont Glore Forgan lost almost $24 million, of which more than $10 million was lost in the last quarter of the period. And in June 1973, the firm's losses were nearly $4 million.

32. As a result of these operating losses, duPont Glore Forgan's capital position deteriorated substantially. In consequence, the firm, which had been on the Special Sur-

veillance List of the Exchange since July 1972, was placed under restrictions by the Exchange pursuant to Exchange Rules 325 and 326 (the "Net Capital Rules"). The Net Capital Rules provide in substance that a member firm may not expand if its net capital ratio is in excess of 10-1 for more than 15 days, must reduce its business if its net capital ratio is in excess of 12-1 for more than 15 days, and may not operate at all if its net capital ratio is more than 15-1. The Net Capital Rules further provide that the Exchange may impose additional capital restrictions on member firms.

33. On May 23, 1973, in response to reports that duPont Glore Forgan's net capital ratio had been substantially in excess of 11-1 since early May, the Exchange restricted duPont Glore Forgan from expanding its business, ordered it to reduce its net capital ratio to 10-1 by May 29, 1973, and ordered the general partners of PHM to commit in writing to maintain duPont Glore Forgan's net capital ratio at that level. duPont Glore Forgan failed to reduce its net capital ratio as ordered, and by May 31, 1973, its net capital ratio exceeded 14-1.

34. On June 7, 1973, the Board of Directors of the Exchange met and directed duPont Glore Forgan immediately to reduce its net capital ratio to 11-1 and to further reduce the ratio to 10-1 by June 13. If by June 13 duPont Glore Forgan

had decided to go forward with a combination with Walston, the reduction was to be accomplished by an infusion of capital; if not, the ratio was to be reduced by immediately delivering out to other firms duPont Glore Forgan accounts. Although duPont Glore Forgan claimed to have reduced its net capital ratio to 11-1, it did not meet its obligation to attain a 10-1 ratio by June 13.

35. Finally, on June 21, 1973 the Exchange ordered duPont Glore Forgan to maintain its net capital ratio under 11-1 until July 2 and to reduce it to 10-1 by that date. The Exchange warned that if duPont Glore Forgan's net capital ratio were not less than 10-1 by July 2, it would immediately give publicity to the firm's financial condition, a step which would have ended duPont Glore Forgan's ability to remain in business.

36. In the fact of these facts, the Perot Interest in May 1973 prepared detailed plans to liquidate duPont Glore Forgan and notified the Exchange that they expected to liquidate duPont Glore Forgan if no agreement with Walston was reached.

TAKEOVER OF WALSTON BY PEROT INTERESTS

37. The Perot Interests had determined that if duPont Glore Forgan were liquidated, substantially all of their investment would be lost and there would be insufficient funds remaining to repay the principal and interest on the $65 million which had been borrowed from banks to finance the investment.

38. The Perot Interests knew that if duPont Glore Forgan were liquidated, the price of EDS stock would decline because of the loss to EDS of revenues from the duPont Glore Forgan contract and the loss to EDS of the flagship company in its effort to establish an industry center in the brokerage industry.

39. To avoid these consequences and to obtain other benefits for themselves and others which they wished to favor, the Perot Interests determined to impose upon Walston a fraudulent, improper and unlawful transaction.

40. The Perot Interests were able to accomplish this objective in part because certain of their number--Gayden, Stauffer, E.D. Systems, EDS, Perot, Mrs. Perot, and Charleston--had fiduciary relationships with Walston, access to its inner councils, and knowledge of its confidential business information which they used to benefit the Perot Interests in disregard of their fiduciary duties to Walston.

41. In July 1972, Walston had entered into two agreements under which Perot had agreed to make a capital investment in Walston and Walston had agreed to employ EDS to do its data processing work. The data processing contract, which formally had been entered into by E. D. Systems, a wholly owned subsidiary of EDS, had been substantially less profitable to EDS than its contract with duPont Glore Forgan. The capital

investment had been made by Perot and Mrs. Perot through Charleston. The total capital investment required of Charleston was $15 million, $10 million of which had been invested prior to July 1, 1973. In return for the investment, Charleston had received convertible preferred stock, warrants and notes, and the power to name Gayden and Stauffer to Walston's Board of Directors and Executive Committee.

42. Beginning late in 1972 discussions were had from time to time between representatives of Walston and representatives of the Perot Interests regarding the possibility of a merger between Walston and duPont Glore Forgan. Then in late May 1973 at a time when duPont Glore Forgan was in its deep capital crisis and on the verge of liquidation, the Perot Interests proposed a transaction radically different from those previously discussed.

43. Although the proposed transaction contemplated that all the operations of duPont Glore Forgan and Walston would be combined and a single comprehensive brokerage business would result, it did not take the usual form. Rather than a merger in which each party would receive stock in the merged company in accordance with its contribution and participate in all business risks of the combined enterprise, the Perot Interests proposed a peculiar form of transaction (the "Perot Plan") in which each of the existing companies would perform exclusively certain of the functions of a brokerage business

while the other company performed the reamining functions. In substance, the Perot Plan called for duPont Glore Forgan to carry out all back office operations, including clearing of securities, accounting, and the like, and for Walston to carryout all front office operations, including sales and operation of the branch office system. Thus, the Perot Plan would result in two firms incapable of operating alone and wholly dependent on each other since each would carry out only a part of the necessary activities of a single business. The Perot Interests demanded that Walston agree to the Perot Plan no later than July 1, 1973. The Perot Interests proposed this unusual form of transaction in order to accomplish the improper and unlawful purposes set forth below.

44. The Perot Interests sought to effectuate the Perot Plan in order (a) to obtain Walston assets for grossly inadequate consideration, (b) to transfer duPont Glore Forgan liabilities to Walston without paying Walston for assuming them, (c) to gain control of Walston without paying any consideration in order to use its assets to benefit themselves and others which they wished to favor, (d) to insulate duPont Glore Forgan from all losses from the operations of the combined brokerage business, thereby preserving a substantial part of their investment required to repay PHM's bank loans, and (e) to maintain and extend as long as possible an unreasonably high flow of revenues and profits to EDS.

45. The Perot Plan was to be implemented by a series of agreements (the "Realignment Agreements"). Defendants Thomson and Cox under the general supervision of defendants Daniel J. Cullen and Fleming were responsible for negotiating with the Perot Interests on behalf of Walston with regard to the Realignment Agreements. During such negotiations, defendants Thomson, Cox, Daniel J. Cullen and Fleming failed to protect the interests of Walston and acceded to numerous unfair, improper and unlawful terms proposed by the Perot Interests.

46. In June 1973, the Perot Interests prepared projections showing what Walston's income and expenses would be if the Perot Plan were adopted. On or about June 13, 1973 the Exchange staff prepared a report analyzing these projections. The report concluded that these projections were unduly optimistic; rather than the profit envisioned in the projections, the Exchange staff concluded that Walston would lose in excess of $1,300,000 per month under the Perot Plan and that Walston could remain in business for only eight months under the plan before its excess capital would be completely depleted. On or about June 23, 1973, copies of the Exchange staff report were furnished to duPont Glore Forgan, Meyerson, Thomson and Cox.

47. Prior to July 1, 1973, representatives of the Perot Interests met with the Department of Justice with regard

to the application of the antitrust laws to the Perot Plan. The representatives of the Perot Interests informed the Department of Justice that duPont Glore Forgan was a failing company and submitted documentation of duPont Glore Forgan's record of losses, its extensive and fruitless efforts to find another merger partner or major investor, and its detailed plans of liquidation if Walston did not agree to the Perot Plan.

48. Despite the enormous consequences of the Perot Plan to Walston and the complexity and unusual nature of the arrangements developed to effectuate it, most members of Walston's Board of Directors were given very little information as to the Perot Plan until the day before the vote was to be taken on the plan. The sole item of written material concerning the Perot Plan furnished to most directors prior to that date was a four page memorandum containing barely more than a page as to the financial aspects of the plan and omitting most of the unfair terms that were included in the final agreements.

49. The Realignment Agreements were numerous, lengthy and complex. They consisted of a Master Agreement and various ancillary agreements, notably a Clearing And Related Services Agreement ("Clearing Agreement"), a "Transfer Agreement", a "Capital Agreement", an Agreement For Electronic Data Processing Supplies And Services ("EDP Agreement") and an Amendment to the Purchase Agreement ("Charleston Amendment"). Drafts of

the lengthy and complex Realignment Agreements were not furnished to most members of the Walston Board of Directors until the day before the July 1, 1973 meeting at which the Perot Plan was to be voted on. Defendants Thomson, Cox, Daniel J. Cullen and Fleming and the Perot Interests knew that the other Walston directors would be unable to digest and comprehend the substance of the agreements in the short span of time available.

50. In fact, the Realignment Agreements were grossly unfair, inequitable, disadvantageous and hazardous to Walston and excessively favorably to the Perot Interests. The following are among the respects in which the agreements were unfair:

a. Pursuant to the Capital Agreement, Walston made a $16,700,000 cash investment in duPont Glore Forgan by purchasing 810 shares of duPont Glore Forgan Series Four Preferred Stock at $10,000 per share and an $8,600,000 subordinated debenture. The amount paid for such securities was greatly in excess of their value in light of duPont Glore Forgan's financial condition and the extraordinarily unattractive terms of the securities.

b. Pursuant to the Transfer Agreement, Walston purchased most of the assets comprising duPont Glore Forgan's branch office system and other front office departments. Walston paid the book value appearing on an unaudited balance sheet for assets such as lease-hold improvements, office fixtures,

furniture and equipment and it assumed all duPont Glore Forgan liabilities with respect to the transferred assets, including lease obligations, even leases on approximately 16 offices which already had been closed. In light of the large operating losses attributable to duPont Glore Forgan's branch offices, the payment of book value constituted a grossly excessive price to pay for these assets; indeed, Walston should have been paid several million dollars for agreeing to assume the lease liabilities.

c. Pursuant to the Clearing Agreement, Walston was obligated to reimburse duPont Glore Forgan for all expenses (including all payments to EDS) incurred by duPont Glore Forgan in performing its back office services under the Clearing Agreement. This reimbursement of expenses was excessive since Walston could have had equivalent services performed at a substantially lower cost. As a purported advance or security payment for the rendering of duPont Glore Forgan's services under the Clearing Agreement, Walston was required to pay $3,000,000 to duPont Glore Forgan on or before July 2, 1973. This sum was to be subordinated to the claims of present and future creditors of duPont Glore Forgan and was not to be subject to repayment in the event of Walston's bankruptcy or liquidation. The Clearing Agreement also imposed responsibility on Walston for future losses respecting customer accounts caused by duPont Glore

Forgan's negligence. Although duPont Glore Forgan thus bore no risk of loss, it would share any gain through a provision in the Clearing Agreement granting it a substantial percentage of any Walston profits.

d. Pursuant to the EDP Agreement, duPont Glore Forgan and Walston guaranteed E.D. Systems a net pre-tax profit for the fiscal year equal to the sum of the profits made by EDS and E.D. Systems in the prior fiscal year under their agreements with duPont Glore Forgan and Walston. Although the guaranty was to be paid by duPont Glore Forgan in the first instance, it would actually be borne by Walston in view of Walston's obligation under the Clearing Agreement to reimburse duPont Glore Forgan for payments to E.D. Systems. This provision was unfair since the cost of the guaranty was unrelated to the value of the services rendered to Walston under the EDP Agreement. Additionally, Walston was unfairly required to pay E.D. Systems $2.5 million at the rate of $100,000 per month on account of its costs in connection with its ceasing to render services under both of the prior contracts and in connection with systems conversion and other work required by virtue of the consolidation of the back office operations of the companies. Furthermore, the payments for services required by the EDP contract were unfair and excessive.

e. Pursuant to the Charleston Amendment, Charleston was permitted to gain voting control of Walston by exchanging

398,803 shares of non-voting preferred stock for an equal number of shares of a new series of preferred stock, each share of which had the voting rights of ten shares of common stock. Charleston thereby acquired 55% voting control of Walston. Although the acquisition of such control should have required a payment to Walston of more than $30 million, the Perot Interests acquired control without paying Walston anything at all.

51. The overall effect of the Perot Plan was as follows: Since all of duPont Glore Forgan's expenses were reimbursed by Walston under the Clearing Agreement and its branch office liabilities assumed by Walston under the Transfer Agreement, the Perot Interests insulated their capital in duPont Glore Forgan from further dissipation by reason of duPont Glore Forgan's huge monthly operating losses. This insulation against risk came at the direct expense of Walston which became fully liable for all expenses and liabilities, and hence losses, of the combined brokerage system. At the same time, duPont Glore Forgan maintained potential for profit through substantial participation in any profit that might be earned by the combined brokerage systems. Through Walston's assumption of the duPont Glore Forgan expenses and the excessively favorably contract between duPont Glore Forgan and EDS, the Perot Interests were also able to sustain a high earnings flow to EDS. In addition

to assuming all of these risks and obligations, Walston was required to pay many millions of dollars for the virtually worthless securities of a failing company and assets of a branch office system which had been generating huge losses at an accelerating rate. Finally, the Perot Interests obtained voting control of Walston without having to pay for it.

52. Although the Exchange knew that the Perot Plan was unfair to Walston, the Exchange on June 29, 1973 granted the approvals and exemptions which under its rules were necessary to permit the Perot Plan to be implemented. At the time it granted such approvals and exemptions, the Exchange knew that if duPont Glore Forgan were liquidated, the Exchange Trust Fund would be immediately liable to pay most, if not all, of the $15,000,000 face amount of the Exchange Note. The Exchange Trust Fund, however, did not then contain any of the funds necessary to pay the obligation, for the Exchange had not yet assessed and collected such funds from its members. In addition, since the CSI held by the Exchange Trust Fund was subordinated to the claims of duPont Glore Forgan's creditors, the Exchange knew that the liquidation of duPont Glore Forgan would eliminate any prospect of the Exchange Trust Fund realizing any return upon the CSI.

53. The Perot Plan and the Realignment Agreements pursuant thereto called for, among other things, a number of

purchases and sales of securities, including: (a) the purchase by Walston of duPont Glore Forgan preferred stock for $8,100,000; (b) the purchase by Walston of a duPont Glore Forgan subordinated debenture for $8,600,000; (c) the exchange by Charleston of 398,803 shares of Walston's Series A preferred stock for an equal number of shares of Walston's Series B preferred stock; (d) the transfer of securities in customer and principal accounts from Walston to duPont Glore Forgan; (e) the grant by Walston of options to purchase its stock to duPont Glore Forgan; and (f) the grant by duPont Glore Forgan of options to purchase its stock to Walston.

54. On July 1, 1973, the Walston Board of Directors held a special meeting in New York City to consider and vote upon the Perot Plan. In connection with their efforts to induce members of Walston's Board of Directors to vote in favor of the Perot Plan, and to prevent shareholders and other interested parties from taking steps to block effectuation of the Perot Plan, certain defendants made untrue statements of material fact, omitted to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, employed devices, schemes and artifices to defraud and engaged in acts, practices and courses of business which operated as a fraud upon Walston as follows:

a. Thomson, Cox, Daniel J. Cullen, Fleming and the Perot Interests misrepresented Walston's financial posi-

tion, its ability to retain capital, and the length of time it could remain in business without the Perot Plan:

(i) They falsely represented that adoption of the Perot Plan was necessary to save Walston from prompt liquidation and that without the Perot Plan Walston would be forced into liquidation within two months. In fact, Walston was in no danger of prompt liquidation, and the true purpose of the Perot Plan was to prevent the immediate liquidation of duPont Glore Forgan. Walston's net capital ratio as of June 30, 1973 was less than 7.9-1, far below duPont Glore Forgan's ratio. Over a three year period, Walston had lost only $1 million, while duPont Glore Forgan had lost $27,000,000, and in the six months prior to July 1, 1973 duPont Glore Forgan's losses were nearly triple those of Walston. Unlike duPont Glore Forgan, Walston was not on the Exchange's Special Surveillance List.

(ii) They falsely represented that if Walston did not approve the Perot Plan, Bank of America would immediately withdraw its $2-1/2 million subordinated capital, that this would result in the withdrawal of the $5 million subordinated capital which had been invested by Security National Bank, and that a chain reaction would develop leading to the prompt exodus of large amounts of subordinated capital and the collapse of Walston within two months. In

fact, under the terms of the subordinated loan agreements, Bank of America and all other subordinated lenders could in no event withdraw their capital on less than six months' notice and no such withdrawal would be permissible after six months if the effect of the withdrawal would be to increase Walston's net capital ratio to more than 10-1.

b. The Perot Interests, the Exchange, Thomson and Cox failed to disclose duPont Glore Forgan's true financial condition and misrepresented facts relating thereto:

(i) The Perot Interests, the Exchange, Thomson and Cox failed to disclose that duPont Glore Forgan had critical capital problems, that duPont Glore Forgan had been placed under restrictions in its business by the Exchange, that duPont Glore Forgan had violated several recent Exchange directives regarding its capital, and that the Exchange had stated its intention of giving publicity to duPont Glore Forgan's financial condition on July 2, 1973 unless its net capital ratio was reduced to 10-1 by that date.

(ii) The Perot Interests failed to disclose that the Perot Interests had represented to the Department of Justice that duPont Glore Forgan was a failing company and failed to disclose the facts submitted to the Department of Justice to support the representation.

(iii) The Perot Interests failed to disclose that the Perot Interests had made plans to liquidate duPont Glore Forgan promptly if the Perot Plan were not approved by Walston.

(iv) Meyerson, acting on behalf of the Perot Interests, misrepresented duPont Glore Forgan's Net Capital Ratio and falsely stated that he did not know whether duPont Glore Forgan was on the Exchange's Special Surveillance List.

c. The Perot Interests and certain others misrepresented that Walston's two principal subordinated lenders--Security National Bank and Bank of America--regarded the Perot Plan as being in Walston's best interests:

(i) The Perot Interests and Thomson, Cox, Daniel J. Cullen and Fleming furnished to the members of Walston's Board of Directors documents indicating that Security National Bank, which had made a subordinated loan to Walston of $5 million, had consented to the Perot Plan, without disclosing that Security National Bank had actually refused to consent to such plan. This non-disclosure was of particular importance in view of the misrepresentations described above to the effect that Security National Bank would withdraw its subordinated capital if the Perot Plan were not approved.

(ii) The Perot Interests, Thomson, and Bank of America misrepresented to members of Walston's Board of Directors that Bank of America regarded the Perot Plan as in Walston's best interests. Thus, Bank of America threatened to give notice of acceleration of its $2-1/2 million subordinated loan to Walston unless the Perot Plan were approved. In fact, Bank of America knew that the Perot Plan would disastrously weaken Walston and substantially increase the risks on its $2-1/2 million loan to Walston. However, unknown to most Walston directors, Bank of America was also the head of a group of banks which had loaned $50 million to PHM for investment in duPont Glore Forgan. Thus, unknown to most Walston directors, Bank of America's true reason for desiring approval of the Perot Plan was to obtain the benefits of increased security on the $50 million loan at the cost of reduced security on the $2-1/2 million loan. (Following the adoption of the Perot Plan, the Perot Interests, Thomson, Cox, Daniel J. Cullen and Fleming fraudulently caused Walston to give Bank of America full security for the $2-1/2 million loan, so that Bank of America was relieved of the risk even on that loan.) Although the Perot Interests knew Bank of America's true reasons for seeking approval of the Perot Plan, they failed to disclose them to Walston's Board of Directors.

d. The Perot Interests and other defendants made misrepresentations and non-disclosures concerning the terms of the Perot Plan and the effects on Walston of the adoption of the Perot Plan:

(i) The Perot Interests and Thomson and Cox presented to the Walston Board of Directors documents prepared by the Perot Interests projecting profitable operations for Walston assuming adoption of the Perot Plan without disclosing that an Exchange staff report had analyzed the projections, had concluded that they were in error, and had developed projections showing that Walston would lose in excess of $1,300,000 per month and thereby would completely exhaust its excess net capital within eight months. In response to a question from a Walston director seeking the Exchange's view as to whether Walston would operate profitably after the Realignment, the Exchange representatives present at the July 1 Board Meeting failed to disclose the existence of the Exchange report projecting large losses and referred instead to the documents prepared by the Perot Interests projecting profits.

(ii) The Perot Interests failed to disclose that in basing the new agreement with EDS on the old duPont Glore Forgan contract, they had given the benefit to EDS of a form of contract which in the eleven

months preceding July 1, 1973 had been more than twice as profitable as EDS' average contract and more than three times as profitable as E.D. Systems' contract with Walston.

(iii) The Perot Interests represented to members of Walston's Board of Directors that certain key management functions at Walston and duPont Glore Forgan after the effectuation of the Perot Plan would be performed by persons then employed by Walston rather than by persons then employed by duPont Glore Forgan.

(iv) Because Thomson, Cox, Daniel J. Cullen, Fleming, Gayden and Stauffer did not give drafts of the numerous, lengthy, and extraordinarily complex Realignment Agreements to most of the other members of Walston's Board of Directors until the day before the meeting at which the agreements were to be voted on, they effectively concealed from such other members most of the material terms of the agreements.

e. The Perot Interests and Thomson, Cox, Daniel J. Cullen and Fleming failed to disclose that Walston had not adequately evaluated the Perot Plan and had not investigated the financial condition of duPont Glore Forgan.

f. The Perot Interests and those of the Defendant Directors who were involved failed to disclose the offers of

benefits which had been made to certain directors in return for their agreement not to negotiate the Realignment Agreements at arms' length, to vote in favor of the Perot Plan, or both.

g. The Perot Interests and the Exchange misrepresented to the Walston Board of Directors that the Exchange had no pecuniary interest in salvaging duPont Glore Forgan. The Perot Interests and the Exchange failed to disclose that the liquidation of duPont Glore Forgan would have compelled the Exchange Trust Fund to make immediate payment of most, if not all, of the $15,000,000 Exchange Note and that the Exchange Trust Fund did not have the funds necessary for such payment.

55. The Perot Interests, Thomson, Cox, Daniel J. Cullen and Fleming sought and obtained shareholder approval to an amendment of Walston's certificate of incorporation changing Walston's name to duPont Walston Incorporated without disclosing the information set forth in paragraph 54 above to Walston's shareholders.

56. The Perot Interests and Thomson, Cox, Daniel J. Cullen and Fleming falsely stated in a June 6, 1973 letter to Walston shareholders and subordinated lenders that the Perot Plan would strengthen Walston's capital position, that Walston's expenses would not increase in proportion to the added production from duPont Glore Forgan's offices, and that Walston would be in a much stronger position as a result of the Perot Plan.

57. Several hours after the July 1, 1973 meeting began and prior to the vote on the Perot Plan, Walston director

George U. Robson left the board room and retired to his hotel room because of illness. Before leaving the meeting, Robson had expressed his opposition to the Perot Plan. Although it was a regular practice at Walston for directors to participate in Board of Directors meetings by telephone, Daniel J. Cullen, Chairman of the Walston Board of Directors, failed to telephone Robson when the vote was taken to obtain Robson's vote. In failing to take Robson's vote, defendant Daniel J. Cullen was acting on behalf of the Perot Interests and Thomson, Cox and Fleming.

58. In the absence of Robson's vote, ten votes were cast in favor of the Perot Plan and nine votes were cast in opposition. The ten directors voting in favor of the plan were the Defendant Directors and the Nominee Directors. Of the Defendant Directors voting in favor of the plan, at least two--DeTata and Doughty--had expressed the intention to vote against the plan but thereafter agreed with the Perot Interests to vote in favor of it in return for certain benefits.

59. The ten to nine vote did not constitute valid corporate approval or authorization of the Perot Plan because:

a. the Perot Plan was not approved by a majority of disinterested directors and was unfair to Walston. Of the ten directors voting in favor of the plan, at least two--Gayden and Stauffer--were interested directors in that they were officers of, directors of, or had financial interests in, other

parties to the Realignment Agreements. Thus, no more than eight disinterested directors voted in favor of the plan while nine voted against it.

b. certain of the Defendant Directors voting in favor of the Perot Plan, including Thomson, Cox, Daniel J. Cullen, Fleming, DeTata and Doughty, had made unlawful agreements with the Perot Interests to vote in favor of the Perot Plan in return for certain benefits to themselves.

c. the vote of Walston director George U. Robson was not obtained.

d. the approval of Walston's shareholders was not obtained; shareholder approval was required because:

(i) the Perot Plan was a merger between duPont Glore Forgan and Walston within the meaning of Section 251 of the Delaware General Corporation Law;

(ii) the Perot Plan constituted a sale or exchange of substantially all of Walston's property and assets within the meaning of Section 271 of the Delaware General Corporation Law, altered the basic nature and structure of Walston's business and eliminated a substantial part of Walston's business.

60. Although Walston was required under the Realignment Agreements to invest more than $16 million in cash in duPont Glore Forgan and to assume duPont Glore Forgan liabilities amounting to many millions of dollars, the Defendant Directors

made no examination of duPont Glore Forgan's books and records and did not ask for audited financial statements of duPont Glore Forgan. The Defendant Directors voted in favor of the Perot Plan without reading or comprehending the Realignment Agreements and without giving adequate consideration to the business and financial consequences to Walston of agreeing to the Perot Plan. The Defendant Directors failed to acquaint themselves sufficiently with Walston's capital position and future prospects to permit them to make an adequate assessment of alternatives to the Perot Plan.

61. Walston and its directors, stockholders and creditors relied upon the misrepresentations and non-disclosures and other improper conduct of the Perot Interests and other defendants described above. By reason of such improper conduct, Walston was caused to effectuate the Perot Plan.

62. Pursuant to the Perot Plan the Perot Interests obtained voting control of Walston, majority representation on Walston's Board of Directors and complete operational control of Walston. Pursuant to the Clearing Agreement, duPont Glore Forgan took control of the books, records and administrative functions of Walston. As a result of this absolute control, the Perot Interests were able to further implement their illegal scheme and device in the following ways, among others:

a. the Perot Interests caused expenses, losses and liabilities, including substantial commodity trading

losses in duPont Glore Forgan's Frankfurt, Germany office, to be recorded and paid as Walston expenses, losses and liabilities when, in fact, under the Realignment Agreements they were the responsibility of and should have been paid by duPont Glore Forgan. Plaintiff is unable to specify other improper charges because the relevant records are in the hands of the Perot Interests and plaintiff has been denied adequate access to them.

b. The Perot Interests caused Walston to execute and effectuate various unfair, fraudulent and preferential transactions with the Perot Interests and other parties and engaged in other conduct detrimental to Walston and its creditors. Thus, the Perot Interests caused Walston to transfer more than $2 million to duPont Glore Forgan pursuant to a letter modification of the Clearing Agreement dated February 27, 1974, and caused Walston to transfer more than $5.1 million to Bank of America and to Security National Bank, all in fraud of Walston's creditors. Plaintiff is unable to specify each such improper transaction or act because the relevant records are in the hands of the Perot Interests and plaintiff has been denied adequate access to them.

c. The Perot Interests appropriated assets of Walston, including the services of Walston employees, to

their own use. Plaintiff is unable to specify each such appropriation because the relevant records are in the hands of the Perot Interests and plaintiff has been denied adequate access to them.

63. By reason of the effectuation of the unfair Realignment Agreements and the improper charges and transactions imposed on Walston by the Perot Interests, Walston sustained losses of more than $30 million in the period subsequent to July 2, 1973 and became insolvent.

COUNT I

Against the Perot Interests, The Exchange And The Defendant Directors

64. Repeats and realleges each and every allegation contained in paragraphs 1 through 18 and 20 through 63 above.

65. The Perot Interests, the Exchange and the Defendant Directors, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of a national stock exchange, knowingly and intentionally employed devices, schemes and artifices to defraud, made untrue statements of material fact, omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in acts, practices and courses of business which operated as a fraud on Walston and its creditors in, and in connection with, the offer, sale and purchase of securities.

66. By reason of the foregoing, the Perot Interests, the Exchange and the Defendant Directors violated Section 10(b) of the Exchange Act and Rule 10b-5.

COUNT II

Against The Perot Interests, The Exchange And The Defendant Directors

67. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63, 65 and 66 above.

68. The Perot Interests, the Exchange and the Defendant Directors (a) were aware that the violations alleged hereinabove were being perpetrated by the other defendants, (b) intentionally aided and abetted and assisted in the commission of such violations, and (c) benefitted from the commission of such violations.

69. By reason of the foregoing, the Perot Interests, the Defendant Directors and the Exchange violated Section 10(b) of the Exchange Act and Rule 10b-5.

COUNT III

Against the Perot Interests And The Defendant Directors

70. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63, 65 and 66 above.

71. Prior to July 1, 1973 the Perot Interests and the Defendant Directors conspired and entered into an illegal contract and agreement to impose the fraudulent, unauthorized and otherwise illegal Perot Plan on Walston in violation of Section 10(b) of the Exchange Act and Rule 10b-5. The Perot Interests and the Defendant Directors were aware of the conspiracy and the wrongs being perpetuated by the other conspirators on Walston in violation of Section 10(b) of the Exchange Act and Rule 10b-5 prior to the vote on the Perot Plan.

72. Certain of the overt acts carried out by the Perot Interests and the Defendant Directors in furtherance of the conspiracy are set forth in paragraphs 42, 43 and 45 through 63 above.

73. By reason of the foregoing the Perot Interests and the Defendant Directors violated Section 10(b) of the Exchange Act and Rule 10b-5.

COUNT IV

Against The Exchange

74. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, and 20 through 63 above.

75. In granting the numerous approvals and exemptions necessary for the implementation of the Perot Plan, the Exchange employed its rules so as to enable the Perot Interests

to impose an unjust and inequitable transaction and course of trade on Walston.

76. The Exchange knew prior to the execution of the Realignment Agreements that duPont Glore Forgan had violated Section 10(b) of the Exchange Act and Rule 10b-5 in seeking Walston's approval of the Perot Plan. Under Section 6 of the Exchange Act, the Exchange is required to expel, suspend or discipline any member who engages in such violations. In spite of its knowledge of the violations, the Exchange took no disciplinary action against duPont Glore Forgan, and instead permitted the Perot Plan to be effectuated.

77. By reason of the foregoing the Exchange violated Section 6 of the Exchange Act.

COUNT V

Against The Perot Interests, The Defendant Directors and Mrs. Perot

78. Repeats and realleges each and every allegation contained in paragraphs 1 through 63, 65, 66, 68, 69 and 71 through 73 above.

79. By reason of the foregoing, the Realignment Agreements are void pursuant to Section 29(b) of the Exchange Act. By reason of the foregoing, all other contracts entered into by Walston on or after July 2, 1973 which are violative of Section 10(b) of the Exchange Act and Rule 10b-5 are void

pursuant to Section 29(b) of the Exchange Act to the extent that the Perot Interests, Mrs. Perot or the Defendant Directors purport to have acquired any rights thereunder.

COUNT VI

Against The Perot Interests

80. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63, and 65 above.

81. By reason of the foregoing, the Perot Interests violated Section 17(a) of the Securities Act.

COUNT VII

Against the Perot Interests

82. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63 above.

83. The Perot Interests offered or sold securities by the use of means or instruments of transportation or communication in interstate commerce or the mails by means of a prospectus and oral communications which included untrue statements of material facts and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

84. The Perot Interests knew, or in the exercise of reasonable care should have known, of the untruths and omissions.

85. By reason of the foregoing, the Perot Interests violated Section 12(2) of the Securities Act.

COUNT VIII

Against Perot, EDS, Gayden, Meyerson Hart, Stauffer, PHM And Mrs. Perot

86. Repeats and realleges each and every allegation contained in paragraphs 1 through 63, 65, 66, 68, 69, 71 through 73, 81 and 83 through 85 above.

87. By reason of the foregoing, the controlling persons set forth in paragraph 19 are liable jointly and severally with and to the same extent as the persons whom they controlled for all violations set forth in counts I through III, VI and VII pursuant to Section 15 of the Securities Act and Section 20(a) of the Exchange Act.

COUNT IX

Against the Perot Interests And The Defendant Directors

88. Repeats and realleges each and every allegation contained in paragraphs 1 through 18 and 20 through 63 above.

89. To induce or promote the issuance, distribution, exchange, sale, negotiation or purchase of stock in the State of New York, and to thereby obtain money, profit or property:

a. the Perot Interests and the Defendant Directors engaged in the fraud, deception, concealment and false pretenses described above,

b. the Perot Interests made the false representations as to the future set forth in paragraph 56 and subparagraphs 54d.(i) and 54d.(iii) above, which were beyond reasonable expectation and unwarranted by existing circumstances, and

c. the Perot Interests and Thomson, Cox, Daniel J. Cullen and Fleming made the false representations and statements set forth in paragraph 54 above, when they (i) knew the truth thereof, or (ii) with reasonable effort could have known the truth thereof, or (iii) made no effort to ascertain the truth thereof, or (iv) lacked knowledge concerning the representation or statements made.

90. By reason of the foregoing, the Perot Interests and the Defendant Directors violated Section 352-c of the New York General Business Law.

COUNT X

Against the Perot Interests, The Exchange And The Defendant Directors

91. Repeats and realleges each and every allegation contained in paragraphs 1 through 18 and 20 through 63 above.

92. The Perot Interests, the Exchange and the Defendant Directors knowingly, recklessly, wilfully and, in the case of the

Perot Interests, maliciously engaged in the misrepresentations, nondisclosures, acts, practices and courses of business described above.

93. By reason of the foregoing, the Perot Interests, the Exchange and the Defendant Directors committed common law fraud.

COUNT XI

Against The Perot Interests
And The Defendant Directors

94. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 42, 43, 45, 57 through 59, 62 and 63 above.

95. The Realignment Agreements were not validly authorized pursuant to applicable state law and hence were and are null and void and without any legal force or effect. Notwithstanding the absence of valid corporate approval of the Realignment Agreements, the Perot Interests and Defendant Directors wrongfully and, in the case of the Perot Interests, maliciously, purported to execute and effectuate such agreements on behalf of Walston.

96. By reason of the foregoing, the Perot Interests and the Defendant Directors must account to Walston for their profits and Walston's losses arising from the wrongful execution and effectuation of these agreements.

COUNT XII

Against The Nominee Directors
And The Defendant Directors

97. Repeats and realleges each and every allegation contained in paragraphs 1 through 18 and 20 through 63 above.

98. The Defendant Directors and the Nominee Directors failed to exercise reasonable and ordinary care and prudence in connection with their consideration of the Realignment Agreements. Their conduct with respect to such agreements was grossly negligent and constituted a bad faith, knowing and reckless disregard of the interests of Walston. The Realignment Agreements were so unfair and inequitable as to Walston as to constitute a gross waste of Walston's assets.

99. Further, the Nominee Directors and certain of the Defendant Directors voted in favor of the Realignment Agreements in knowing breach of their fiduciary obligations to Walston and its creditors because of the benefits to themselves and others which they expected would accrue through approval of such agreements.

COUNT XIII

Against The Perot Interests
Except The Nominee Directors

100. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63, 98 and 99 above.

101. The Perot Interests other than the Nominee Directors knowingly, wilfully and maliciously caused the Nominee Directors and the Defendant Directors to breach their fiduciary duties to Walston and to waste Walston's assets and assisted them in doing so.

COUNT XIV

Against the Perot Interests
And The Defendant Directors

102. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63, 98, 99 and 101 above.

103. By reason of the foregoing, the Perot Interests and the Defendant Directors violated Sections 720 and 1317 of the New York Business Corporation Law.

COUNT XV

Against duPont Glore Forgan

104. Repeats and realleges each and every allegation contained in paragraphs 1 through 16, 42, 43, 62 and 63 above.

105. Pursuant to the Realignment Agreements and amendments thereto, duPont Glore Forgan was obligated to collect and did collect brokerage commissions and other sums of money on behalf of Walston and was obligated to remit a portion of such sums to Walston. In addition, in order to carry out its obligations to Walston under the Realignment Agreements, duPont

Glore Forgan was entrusted with much property belonging to Walston.

106. By virtue of its obligations to Walston, duPont Glore Forgan at all times material hereto stood in a fiduciary relationship to Walston with respect to such money and other property.

107. duPont Glore Forgan has failed to make an accounting with respect to the Walston property held by it.

108. duPont Glore Forgan has failed to return the Walston property held by it.

109. By reason of the foregoing, duPont Glore Forgan is required to account to the plaintiff for all monies and properties received by it under the Realignment Agreements and any amendments thereto and is liable to plaintiff for all sums found to be due Walston from duPont Glore Forgan.

COUNT XVI

Against The Perot Interests

110. Repeats and realleges each and every allegation contained in paragraphs 1 through 16, 42, 43, 62, 63, 105 and 106 above.

111. By making improper charges to Walston purportedly pursuant to the Realignment Agreements and through other improper and unauthorized acts, duPont Glore Forgan knowingly,

wilfully, maliciously and unlawfully assumed and exercised ownership over a portion of the money and other property it held on behalf of Walston.

112. Plaintiff cannot now specify the money and other property unlawfully converted by duPont Glore Forgan because the relevant records are in the hands of the Perot Interests and plaintiff has been denied adequate access to them.

113. The Perot Interests other than duPont Glore Forgan, knowingly, wilfully and maliciously aided, abetted and connived with duPont Glore Forgan in converting Walston's money and other property.

114. By reason of the foregoing, the Perot Interests are liable to plaintiff for the conversion of Walston's money and other property.

COUNT XVII

Against The Perot Interests

115. Repeats and realleges each and every allegation contained in paragraphs 1 through 18 and 20 through 63 above.

116. The Realignment Agreements provided for a series of interconnected transfers between Walston on the one hand and the Perot Interests on the other. These transfers included transfers of property and assumptions of obligations by Walston. Pursuant to the Realignment Agreements, and the amendments thereto, Walston was thus caused to transfer property to the Perot

Interests and incur obligations to the Perot Interests from and after July 2, 1973 until the filing of the Chapter XI petition by Walston on March 27, 1973. Plaintiff is unable to specify each such transfer or obligation because the relevant records are in the hands of the Perot Interests and plaintiff has been denied adequate access to them. Such transfers of property and incurrences of obligations are interrelated with one another and constitute a single transfer by Walston under Sections 67d and 70e of the Bankruptcy Act. This transfer will hereinafter be referred to as the "Fraudulent Transfer."

117. At all times material hereto, duPont Glore Forgan was owned and completely dominated and controlled by the other Perot Interests.

118. The benefits and proceeds of the Fraudulent Transfer (as well as the Preferential Transfers and Post-Bankruptcy Transfers as hereinafter defined) which in form were received by duPont Glore Forgan were in actuality received and enjoyed by the other Perot Interests as well.

119. Further, duPont Glore Forgan engaged in various fraudulent transfers to other of the Perot Interests on or after July 2, 1973.

120. At all times from and after July 2, 1973, there existed creditors of Walston with claims which are provable under the Bankruptcy Act.

121. The Fraudulent Transfer was not made "in good faith" or for fair consideration.

122. The Fraudulent Transfer was a fraudulent transfer within the meaning of Section 67d(2)(a) of the Bankruptcy Act and may be recovered by the Trustee for the benefit of Walston's general creditors pursuant to Section 67d(6) and 70e(2) of the Bankruptcy Act because Walston was rendered insolvent by reason of it.

COUNT XVIII

Against The Perot Interests

123. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63 and 116 through 121 above.

124. The Fraudulent Transfer was a fraudulent transfer within the meaning of Section 67d(2)(b) of the Bankruptcy Act and may be recovered by the Trustee for the benefit of Walston's general creditors pursuant to Sections 67d(6) and 70e(2) of the Bankruptcy Act because it was made and incurred at a time when the property remaining in Walston's possession was an unreasonably small capital for the business and transactions in which Walston was engaged or in which it was about to engage.

COUNT XIX

Against The Perot Interests

125. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63 and 116 through 121 above.

126. The Fraudulent Transfer was a fraudulent transfer within the meaning of Section 67d(2)(c) of the Bankruptcy Act and may be recovered by the Trustee for the benefit of Walston's general creditors pursuant to Sections 67d(6) and 70e(2) of the Bankruptcy Act, because it was made or incurred by Walston at a time when it intended to incur or believed that it would incur debts beyond its ability to pay as they matured.

COUNT XX

Against The Perot Interests

127. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63 and 116 through 120 above.

128. The Fraudulent Transfer was a fraudulent transfer within the meaning of Section 67d(2)(d) of the Bankruptcy Act and may be recovered by the Trustee for the benefit of Walston's general creditors pursuant to Sections 67d(6) and 70e(2) of the Bankruptcy Act because it was made or incurred by Walston with the actual intent to hinder, delay or defraud its existing and future creditors.

COUNT XXI

Against the Perot Interests

129. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 20 through 63, and 116 through 121 above.

130. The Fraudulent Transfer was fraudulent within the meaning of Sections 273 through 276 of the Debtor and Creditor Law of New York State and may be recovered by the Trustee for the benefit of Walston's general creditors pursuant to Sections 70e(1) and 70e(2) of the Bankruptcy Act.

COUNT XXII

Against the Perot Interests

131. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 62 and 117 through 120 above.

132. During the four month period preceding March 27, 1974, Walston made numerous transfers of its property to the Perot Interests on account of antecedent debts which enabled the Perot Interests to obtain a greater percentage of their debts than other creditors of Walston of the same class. These transfers will hereinafter be referred to as the "Preferential Transfers". Plaintiff is unable to specify each of the Preferential Transfers because the

relevant records are in the hands of the Perot Interests and plaintiff has been denied adequate access to them. One Preferential Transfer which the Perot Interests caused Walston to make is the transfer to duPont Glore Forgan of more than $2,000,000 referred to in paragraph 62(b) above.

133. Each of the Preferential Transfers was made at a time when Walston was insolvent.

134. Each of the Perot Interests or his agent knew or had reason to believe that Walston was insolvent at the time of each of the Preferential Transfers.

135. Each of the Preferential Transfers constituted a preferential payment which may be avoided by the Trustee and the proceeds thereof recovered by the Trustee for the benefit of Walston's general creditors pursuant to Section 60b of the Bankruptcy Act.

COUNT XXIII

Against The Perot Interests

136. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 18, 62 and 117 through 120 above.

137. Plaintiff, upon his appointment as Trustee on May 29, 1974, became vested pursuant to Section 70a of the Bankruptcy Act with title to all of Walston's non-exempt

property as of the filing date, March 27, 1974, including all documents relating to its property.

138. Subsequent to March 27, 1974 Walston engaged in transfers of its property to the Perot Interests for which it did not receive present fair equivalent value and with respect to which the Perot Interests were not acting in good faith. Such transfers will hereinafter be referred to as the "Post-Bankruptcy Transfers." Plaintiff is unable to specify each of the Post-Bankruptcy Transfers because the relevant records are in the hands of the Perot Interests and plaintiff has been denied adequate access to them.

139. Each of the Post-Bankruptcy Transfers may be recovered by the Trustee for the benefit of Walston's general creditors pursuant to Section 70 of the Bankruptcy Act.

COUNT XXIV

Against The Perot Interests

140. Repeats and realleges each and every allegation contained in paragraphs 1 through 18, 62, 117 through 120 and 137 above.

141. To enable duPont Glore Forgan to fulfill its obligations under the Realignment Agreements, it took custody of, but not title to, much of Walston's property, including many of the documents relating to Walston's property.

142. Pursuant to Section 70b of the Bankruptcy Act, a trustee is required to assume or reject any executory contract of a bankrupt within sixty days after the adjudication of bankruptcy or within thirty days after his qualification, whichever is later.

143. Under section 70(b) of the Bankruptcy Act and Rule 607 of the Bankruptcy Rules, any executory contract of a bankrupt not specifically assumed by the trustee within sixty days after his qualification is deemed rejected unless the time for assumption has been extended by the Court.

144. None of the Realignment Agreements or any amendment thereto has been assumed by the Trustee and no extension of time for assumption has been granted. Thus, on or about July 29, 1974 (hereinafter the "Termination Date") all of the Realignment Agreements were deemed rejected and all of their executory features became of no further force or effect.

145. Subsequent to the Termination Date, duPont Glore Forgan has continued to receive property belonging to Walston and has purported to act on Walston's behalf with respect to property belonging to Walston.

146. Although duPont Glore Forgan has ceased to have any right to retain Walston's property, it has refused to comply with the Trustee's demands for return of the property and has also ignored his request that duPont Glore Forgan stop purporting to act on behalf of Walston.

WHEREFORE, plaintiff demands judgment

(a) against the Perot Interests on counts I through III, V through XI, XIII and XIV, against the Exchange on counts I, II, IV, and X, against the Defendant Directors on counts I through III, V, IX through XII, and XIV and against Mrs. Perot on count VIII for all damages, including the damages attributable to the wrongful execution and effectuation of the Realignment Agreements, to Walston resulting from the wrongful acts alleged therein, in an amount to be determined on the trial of this action, which amount is not less than $45,000,000;

(b) against the Perot Interests for punitive damages on counts IX through XI, XIII and XIV in an amount not less than $45,000,000 or such higher amount as would equal the damages to Walston and the profits and other benefits derived by the Perot Interests by reason of the wrongful acts alleged therein;

(c) against the Perot Interests on counts I through III, V through XI, XIII and XIV requiring them to account for, pay over and disgorge any and all profits and benefits, or the value thereof, received or enjoyed by them on account of the wrongful acts alleged therein;

(d) against duPont Glore Forgan on count XV requiring it to account to the plaintiff for all sums and other property received by it pursuant to the Realignment Agreements or any amendments thereto and requiring it to pay over to plaintiff any sums found to be due Walston thereunder;

(e) against the Perot Interests on Count XVI for damages in an amount equal to the value of the property converted as well as punitive damages in an amount equal thereto;

(f) against the Perot Interests on Counts XVII to XXI for the value of the Fraudulent Transfer;

(g) against the Perot Interests on Count XXII requiring them to return the property preferentially transferred or, if such property has been converted, requiring them to pay the value thereof;

(h) against the Perot Interests on Count XXIII for the value of the Post-Bankruptcy Transfers;

(i) against the Perot Interests on Count XXIV,

(i) ordering the Perot Interests to turn over to plaintiff any and all property belonging to Walston which they now possess or hereafter may possess or over which they now have, or hereafter may have, custody or control,

(ii) for damages resulting from the wrongful conduct alleged therein,

(iii) preliminarily and permanently enjoining the Perot Interests from selling, assigning, transferring, disposing of or comingling any and all property belonging to Walston which the Perot Interests now possess or hereafter may possess or over which they now have, or hereafter may have, custody or control.

(iv) preliminarily and permanently enjoining the Perot Interests from directly or indirectly acting, purporting to act or representing that they have the authority to act on behalf of Walston or as Walston's agent or representative with respect to any and all property payable to Walston, in the name of Walston, received by the Perot Interests for the account of Walston, or otherwise directed or addressed to Walston or belonging to Walston;

(j) for interest on the amounts demanded herein;

(k) for the costs and disbursements of this action; and

(l) for such other, further and different relief as to the Court may seem just and proper.

Dated: New York, New York
July , 1975

HUGHES HUBBARD & REED

By _____
A Member of the Firm
Attorneys for Winthrop J. Allegaert,
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, As Trustee of duPont Walston Incorporated, Plaintiff, -against- H. ROSS PEROT, et al., Defendants.	75 Civ. 3214 (W.K.) NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the complaint (copy attached hereto) and the motion and all supporting papers of certain of the defendants to stay the action in favor of required arbitration, the undersigned will move this Court on October 24, 1975, Room 1105, United States Courthouse, Foley Square, New York, New York at 2:00 P.M., or as soon thereafter as counsel may be heard, for an order pursuant to the inherent powers of this Court to control its docket, directing that the action be stayed as to defendant New York Stock Exchange, Inc. pending arbitration of all claims asserted against the other defendants who are seeking arbitration, and for such other and further relief as is just and proper. The ground for this motion is that the arbitration will resolve many of the issues in this action and may render it moot, and that the failure to stay the action as to defendant New York Stock Exchange, Inc. will result in a duplication of effort and create the possibility of

inconsistent results.

Dated: New York, N.Y.
October 14, 1975

Yours, etc.

MILBANK, TWEED, HADLEY & McCLOY

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COMPLAINT

See Complaint at 6.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Plaintiff,

-against-

H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E. D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR, and D. TIPP CULLEN,

Defendants.

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75 Civ. 3214 (WK)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affidavits of Peter Gruenberger, Robert Bishop and Delia R. McQuade the exhibits annexed thereto, and the memorandum submitted in support thereof, the defendants listed below will move this Court, before the Honorable Whitman Knapp, in Room 1105 of the United States Courthouse, Foley Square, New York, New York on October 24, 1975 at 10:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, for an order pursuant to 9 U.S.C. §3:

(1) staying this action in favor of the required arbitration of all claims asserted in this action against the following defendants: H. Ross Perot, Electronic Data Systems Corporation, duPont Glore Forgan Incorporated, William K. Gayden,

Morton H. Meyerson, Milledge A. Hart, III, Margot Perot, Mervin L. Stauffer, PHM & Co., Charleston Investment Company, E. D. Systems Corporation, Daniel J. Cullen, William D. Fleming, George T. Thomson and Charles W. Cox; and

(2) directing that the controversies be arbitrated according to one of the alternatives specified in defendants' memorandum of law (Point II).

Dated: New York, New York
October 14, 1975

Yours, etc.

WEIL, GOTSHAL & MANGES

By _____
(A Member of the Firm)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated, Plaintiff, -against- H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATION, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E.D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR and D. TIPP CULLEN, Defendants.	75 Civ. 3214 (WK) AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER GRUENBERGER, being duly sworn, deposes and says:

1. I am a member of the firm of Weil, Gotshal & Manges, attorneys for certain of the defendants herein. I make this affidavit in support of defendants' motion pursuant to the United States Arbitration Act for a stay of this action pending compulsory arbitration of all claims raised by plaintiff, the Trustee in bankruptcy of duPont Walston Incorporated ("Walston"), which was a member corporation of the New York and American Stock Exchanges.

2. The 15 defendants who have joined in this motion are as follows:

(1) duPont Glore Forgan Incorporated ("DGF INC."), a former member corporation of the New York and American Stock Exchanges (respectively "NYSE" and "Amex");

(2) PHM & Co., the owner of a majority of DGF Inc.'s stock and an approved person of the NYSE;

the following three partners of PHM & Co.:

(3) H. Ross Perot;

(4) Milledge A. Hart, III, who formerly was an allied member of the NYSE, and

(5) Morton H. Meyerson, formerly an allied member of the NYSE and Amex;

the following six directors of Walston, all of whom (with the exception of Gayden, number "10" below) were allied members of the NYSE and/or Amex:

(6) Daniel J. Cullen, Walston's former Chairman of the Board;

(7) William D. Fleming, Walston's former President;

(8) George T. Thomson, Walston's former Chief Financial Officer;

(9) Charles W. Cox, Walston's former Secretary-Treasurer;

(10) William K. Gayden, and

(11) Mervin L. Stauffer,

(12) Charleston Investment Corporation, which had a $15 million investment in Walston and was an approved person of the NYSE;

(13) Margot Perot, who owned the common stock of Charleston Investment Corporation;

(14) Electronic Data Systems Corporation, which had a data processing contract with DGF Inc. and

(15) E.D. Systems Corporation, which had a data system contract with Walston.

3. The NYSE which is a defendant in this action has filed a separate motion to stay the action as to it pending the arbitration required as to these moving defendants.

4. The four remaining defendants who have not as yet made any motion are former directors of Walston: Douglas E. DeTata, John J. Doughty and D. Tipp Cullen, all of whom were sales executives, and Allan Blair who was a floor trader.

5. Submitted herewith under separate cover are the Exhibits referred to in the accompanying memorandum of law, which I affirm are true copies of the following documents:

Exhibit A: A conformed copy of the Realignment Agreements, which are central to the plaintiff's claims, among Walston and many of the defendants.

Exhibits B, C. and D: Copies of three unreported decisions staying actions and applying the arbitration provisions contained in Section VIII of New York Stock Exchange Constitution, entitled Hirsch v. F. I. duPont, Glore Forgan & Co., Index No. 11514/72 (Sup. Ct. 2/1/74) and Fraiman v. F. I. duPont, Glore Forgan & Co., Index No. 23712 (Sup. Ct. 3/15/73 and Klebanow v. Ira Haupt & Co., Index No. 1105/64 (Sup. Ct. 3/18/64). These cases are in addition to the uniform body of officially reported case law cited in defendants' memorandum establishing that arbitration is required in this case.

6. Also submitted in support of this motion are affidavits of officers of the NYSE and Amex verifying that 12 of the defendants (10 of whom are movants here) were members or allied members of either one or both of those Exchanges, and are thus entitled to require the plaintiff to arbitrate the claims raised herein under the member arbitration provisions contained

in the constitutions of the NYSE and Amex. The other seven defendant-movants who are non-members can require the plaintiff to arbitrate under the non-member arbitration provisions contained therein, since all of the claims raised here arise out of the brokerage business of Walston, a former member corporation.

/s/Peter Gruenberger
Peter Gruenberger

Sworn to before me this
14th day of October, 1975

/s/ Upjohn James Meadow
Notary Public

DuPONT GLORE FORGAN INCORPORATED

WALSTON & CO., INC.

REALIGNMENT OF BUSINESSES AS OF JULY 2, 1973

CLOSING MEMORANDUM

AND

COMPOSITE CONFORMED COPIES

OF

MASTER AGREEMENT, ANCILLARY AGREEMENTS AND VOTING AGREEMENT

DuPONT GLORE FORGAN INCORPORATED

WALSTON & CO., INC.

REALIGNMENT OF BUSINESSES AS OF JULY 2, 1973

CLOSING MEMORANDUM

I

DEFINITIONS

The following definitions are used in this Closing Memorandum. All documents are dated as of July 2, 1973 and all dates are in 1973 unless otherwise specified.

AMEX	American Stock Exchange, Inc.
Ancillary Agreements	The Ancillary Agreements referred to in the Master Agreement
ASA Agreement	Agreement, dated April 6, 1972, between Perot and DGF respecting Perot's collateralization of the debit balance in the Acquisition Settlement Account maintained by DGF
ASA Amendment	Agreement between DGF and Perot amending the ASA Agreement
BA	Bank of America National Trust and Savings Association
BA Amendment	Amendment to the Loan Agreement, dated as of February 16, 1973, between BA and Walston (Exhibit 5 to the Master Agreement)

BA Pledge Agreement	Pledge Agreement between BA and Walston (Exhibit C to BA Amendment)
BA Priority Agreement	Agreement among Perot, PHM and BA concerning the DGF Debenture in the amount of $2,866,667 held by BA pursuant to the BA Pledge Agreement
Capital Agreement	Capital Agreement, among PHM, Walston and DGF (Exhibit 3 to Master Agreement)
Charleston	Charleston Investment Company
Charleston Amendment	Amendatory Agreement to the Charleston Purchase Agreement (Exhibit 7 to Master Agreement)
Charleston Purchase Agreement	Purchase Agreement, dated July 5, 1972, between Charleston and Walston, as amended on August 18, October 12 and November 27, 1972, and as of February 16, 1973
Chemical	Chemical Bank
Clearing Agreement	Clearing and Related Services Agreement, between DGF and Walston (Exhibit 1 to Master Agreement)
Closing	Closing on July 2, as defined in Section 2.1 of the Master Agreement

Consent and Acknowledgment	Consent and Acknowledgment under the Loan Agreement, dated as of February 15, 1973, between PHM and BA et al. (Exhibit 8 to Master Agreement)
CSI 2d Amendment	First Amendment to the CSI 2d Agreement (Exhibit 11 to Master Agreement)
DGF	duPont Glore Forgan Incorporated
DGF Debentures	Senior Subordinated Debentures Due June 30, 1983 of DGF payable to Walston (substantially in the form of Exhibit B to the Capital Agreement)
DGF Preferred Stock	Series Four Preferred Stock, par value $1 per share, of DGF
DGF Proprietary Securities	The "Transferred Securities" (as defined in the Transfer Agreement) held by DGF for its own account which were transferred to Walston and redelivered by Walston to DGF as custodian for the account of Walston
EDP Agreement	Agreement for Electronic Data Processing Supplies and Services among DGF, Walston, EDSC and EDS (Exhibit 4 to Master Agreement)
EDS	E. D. Systems Corporation, a wholly-owned subsidiary of EDSC

EDSC	Electronic Data Systems Corporation
FNB	First National Bank in Dallas
FNB Amendment	Amendatory Agreement to the Letter of Credit Agreement between PIIM, FNB et al. (Exhibit 9 to Master Agreement)
Investment Letter	Letter from Perot to DGF relating to the securities of DGF received and to be received by Perot pursuant to the Capital Agreement
Justice	Department of Justice, Anti-Trust Division
Letter Agreement	Letter Agreement among DGF, PHM and Walston (Exhibit 12 to Master Agreement)
LHSMO	Leva, Hawes, Symington, Martin & Oppenheimer
Master Agreement	Master Agreement among DGF, Walston, PHM and Charleston
NASD	National Association of Securities Dealers, Inc.
NYSE	New York Stock Exchange, Inc.
Pari Passu Agreement	Agreement among Walston, DGF, PIIM and Perot (Exhibit 13 to Master Agreement)
Perot	H. R. Perot

Perot SDN	The Secured Demand Note delivered pursuant to the Perot SDN Agreement (substantially in the form of Annex I to Exhibit C to the Capital Agreement)
Perot SDN Agreement	Amendment to the Secured Demand Note Collateral Agreement, dated March 29, 1973 between Perot and DGF (substantially in the form of Exhibit C to the Capital Agreement)
PHM	PHM & Co.
SEC	Securities and Exchange Commission
S&S	Shearman & Sterling
SNB	Security National Bank
SNB Amendment	Amendment to the Loan Agreement, dated as of November 27, 1972, between SNB and Walston (Exhibit 6 to Master Agreement)
SNB Pledge Agreement	Pledge Agreement between SNB and Walston (Exhibit C to SNB Amendment)
SNB Priority Agreement	Agreement among Perot, PHM and SNB concerning the DGF Debenture in the amount of $5,733,333 held by SNB pursuant to the SNB Pledge Agreement

Transfer Agreement	Transfer Agreement, between DGF and Walston (Exhibit 2 to Master Agreement)
Voting Agreement	Voting Agreement among Charleston and certain stockholders of Walston (Exhibit 14 to Master Agreement)
Walston	Walston & Co., Inc. (name changed to duPont Walston Incorporated as of July 2)
Walston Customer Securities	The securities held by Walston for the accounts of its customers which were delivered to DGF for the accounts of the same customers
Walston Preferred Stock	Series B Convertible Preferred Stock, par value $5 per share, of Walston
Walston Proprietary Securities	The securities held by Walston for its own account which were delivered to DGF for the account of Walston
Warrant Holders' Agreement	Warrant Holders' Agreement among Walston, Charleston and William K. Gayden
WGM	Weil, Gotshal & Manges
WSL	The Wall Street Leasing Corporation
WSL Amendment	Amendatory Agreement to the Sixth, Seventh and Eighth Loan Agreements between WSL and Chemical (Exhibit 10 to Master Agreement)

II

Action Taken Prior to the Closing

A. Corporate Action—DGF.

1. On June 29, the Board of Directors of DGF took the following action:

a. approved the Master Agreement and each of the Ancillary Agreements to which DGF is a party and authorized the implementation of the proposed plan of realignment;

b. in connection with the CSI 2d Amendment, approved an amendment to the Certificate of Incorporation of DGF increasing the number of shares of Class A Common Stock which DGF is authorized to issue from 7,000,000 to 12,000,000;

c. accepted the resignations of Walter E. Auch, Robert C. Dunwoody, J. Russell Forgan, Daniel D. Jackson, Robert Marter and Ralph W. Williams, Jr., as directors; reduced the number of directors constituting the entire Board of Directors to five members; and elected George T. Thomson as a director, all effective as of the Closing; and

d. elected George T. Thomson, Morton H. Meyerson, Kenneth Z. Scott and Larry S. Glazer to the Executive Committee of DGF and elected George T. Thomson as Chairman of the Executive Committee, all effective as of the Closing.

2. On July 1, stockholders of DGF representing in excess of 50% of the outstanding Class A Common Stock of DGF approved the Master Agreement and the Ancillary Agreements to which DGF is a party and authorized the implementation of the proposed plan of realignment and approved the amendment to the Certificate of Incorporation of DGF described in the preceding paragraph.

3. On July 1, a Certificate pursuant to Section 151 of the Delaware General Corporation Law authorizing the issue of DGF Preferred Stock was executed by DGF and arrangements were made for filing the certificate with the Secretary of State of Delaware immediately prior to the Closing.

4. By July 2, notices of the approval of the (i) Master Agreement and the Ancillary Agreements and (ii) amendment to the Certificate of Incorporation of DGF, by consent of stockholders representing in excess of 50% of the outstanding shares of Class A Common Stock, pursuant to Section 228 of the Delaware General Corporation Law, had been sent to all DGF stockholders from whom written consents to such action were not obtained.

5. On July 1, a Certificate of Amendment of Certificate of Incorporation authorizing an increase in the number of shares of Class A Common Stock which DGF is authorized to issue was executed by DGF and arrangements were made for filing the certificate with the Secretary of State of Delaware immediately prior to the Closing.

B. Corporate Action—Walston.

1. By June 29, stockholders of Walston representing in excess of 50% of its outstanding Common Stock had consented to an amendment to Walston's Certificate of Incorporation changing its name to "duPont Walston Incorporated."

2. On June 29, notices of the approval of the amendment of the Certificate of Incorporation changing Walston's name to "duPont Walston Incorporated" by consent of stockholders representing in excess of 50% of the outstanding shares of Common Stock, pursuant to Section 228 of the Delaware General Corporation Law, were sent to all Walston stockholders from whom written consents to such action were not obtained.

3. On July 1, the Board of Directors of Walston took the following action:

a. approved the Master Agreement and each of the Ancillary Agreements to which Walston is a party and authorized the implementation of the proposed plan of realignment;

b. increased the number of Directors constituting the whole Board of Directors to 24 and elected Walter E. Auch, Robert C. Dunwoody, Morton H. Meyerson and Harold A. Rousselot to fill the vacancies created by such increase, all effective as of the Closing;

c. appointed, effective as of the Closing, a ten-member Executive Committee composed of the following persons: Walter E. Auch, Daniel J. Cullen, Douglas E. DeTata, John J. Doughty, Robert C. Dunwoody, William K. Gayden, Morton H. Meyerson, Harold A. Rousselot, George T. Thomson and Carl R. Walston; and

d. elected Walter E. Auch as President and Chief Executive Officer of Walston effective as of the Closing.

4. On July 1, a Certificate of Amendment of Certificate of Incorporation changing Walston's name to "duPont Walston Incorporated" was executed by Walston and arrangments were made for filing the certificate with the Secretary of State of Delaware at the time of Closing.

5. On July 2, a certificate pursuant to Section 151 of the Delaware Corporation Law authorizing the issue of Walston Preferred Stock and decreasing the number of shares of Series A Convertible Preferred Stock of Walston authorized for issue was executed by Walston and arrangements were made for filing the certificate with the Secretary of State of Delaware immediately prior to the Closing.

C. Corporate Action—Charleston.

1. On June 29, the Board of Directors of Charleston approved the Master Agreement and each of the Ancillary Agreements to which it is a party, and the consummation of the transactions contemplated thereby.

D. NYSE.

1. By letters dated June 22, June 29 and July 1, the NYSE either approved or stated that it had no objection to all material aspects of the proposed plan of realignment.

E. AMEX.

1. Approvals corresponding to those obtained from the NYSE, to the extent necessary, were obtained from the AMEX prior to the Closing (confirmed by letter of July 6).

F. JUSTICE.

1. On March 2, Justice was notified by WGM of the possibility of some form of consolidation or realignment of the businesses of DGF and Walston.

2. On June 4, Justice was notified by WGM of the proposed realignment and Justice instituted an investigation to consider the proposed realignment.

3. On June 6, WGM and S&S commenced submitting information to Justice regarding the proposed realignment.

4. By the time of the Closing, Justice did not indicate any opposition to the proposed realignment.

G. SEC.

1. Before the Closing, the SEC was kept generally apprised of the status of the realignment by LHSMO.

H. BANKS.

1. Prior to the Closing, discussions were held with BA, FNB, The First National Bank of Chicago and Morgan Guaranty Trust Company of New York and arrangements were made for the execution and delivery effective at the time of the Closing of the Consent and Acknowledgment.

2. Prior to the Closing, discussions were held with FNB and arrangements were made for the execution and delivery effective at the time of the Closing of the FNB Amendment.

3. Prior to the Closing, discussions were held with Chemical and arrangements were made for the execution and delivery effective at the time of the Closing of the WSL Amendment.

4. Prior to the Closing, discussions were held with SNB and arrangements were made for the execution and delivery effective at the time of the Closing of the SNB Amendment and the SNB Pledge

Agreement, which arrangements also contemplated the execution and delivery of the following documents:

a. Written notice by Walston to Charleston of Walston's election to sell $5,000,000 principal amount of subordinated notes to Charleston on August 18 pursuant to the Charleston Purchase Agreement.

b. Letter from Charleston to SNB as to Charleston's waiver of certain events of default or acceleration under the Charleston Purchase Agreement affecting Charleston's obligation to make the aforementioned purchase.

c. SNB Priority Agreement.

5. Prior to the Closing, discussions were held with BA and arrangements were made for the execution and delivery effective at the time of the Closing of the BA Amendment and the BA Pledge Agreement, which arrangements also included execution and delivery of the BA Priority Agreement.

I. Inventories of Securities.

1. By July 1, a physical inventory had been taken by DGF and Walston of the DGF Proprietary Securities and securities held for the account of DGF's customers.

2. By July 1, a physical inventory had been taken by DGF and Walston of the Walston Proprietary Securities and Walston Customer Securities.

J. DGF Leases.

1. Prior to the Closing the following action regarding DGF office leases was taken: DGF had reviewed, and prepared a chart in respect of, all DGF office leases which were to be assigned to Walston; a copy of such chart was delivered to, and reviewed by, Walston; by letters dated June 18, DGF had transmitted consents to the assignment of such leases to, requesting execution by, all lessors whose consents were required; and some, but not all, such consents were executed and delivered to DGF.

III

Preliminary Closing

A Preliminary Closing was held at the office of Walston, 77 Water Street, New York City, commencing at 12:01 A.M. (New York City Time), Monday, July 2, at which all documents (other than securities, checks and telegrams) to be delivered at the Closing were reviewed, executed and deposited in escrow until completion of the Closing.

IV

Closing

The Closing was held at the office of First Jersey National Bank and Trust Company, Jersey City, New Jersey, commencing at 9:00 A.M. (New York City Time) on Monday, July 2. Persons present at the Closing were:

WALSTON
By: S&S

CHARLESTON
By: WGM

WILLIAM K. GAYDEN
By: WGM

EDS
By: LHSMO

DGF
By: WGM

PHM
By: WGM

H. R. PEROT
By: WGM

EDSC
By: LHSMO

S&S
By: John C. MacMurray
and Andrew F. Loomis

LHSMO
By: Davis R. Robinson

WGM
By: Stuart D. Ames

Walston Stockholder Parties to
Voting Agreement
By: S&S

All of the transactions which occurred at and as part of the Closing were deemed to have taken place simultaneously on July 2, effective prior to the opening of business on July 2, and no delivery or payment was considered to have been made until all such transactions had been completed. The following actions were deemed to have occurred at the Closing:

A. DELIVERY OF AGREEMENTS.

1. The Master Agreement was delivered by the parties thereto.

2. The Clearing Agreement and schedules thereto were delivered by the parties thereto.

3. The Transfer Agreement and schedules thereto were delivered by the parties thereto.

4. The Capital Agreement was delivered by the parties thereto.

5. The EDP Agreement was delivered by the parties thereto.

6. The BA Amendment was delivered by the parties thereto.

7. The SNB Amendment was delivered by the parties thereto.

8. The Charleston Amendment was delivered by the parties thereto.

9. The Consent and Acknowledgment was delivered by the parties thereto.

10. The FNB Amendment was delivered by the parties thereto.

11. The WSL Amendment was delivered by the parties thereto.

12. The CSI 2d Amendment was delivered by the parties thereto.

13. The Letter Agreement was delivered by the parties thereto.

14. The Pari Passu Agreement was delivered by the parties thereto.

15. The Voting Agreement was delivered by the parties thereto.

16. The Perot SDN Agreement was delivered by the parties thereto.

17. The Warrant Holders' Agreement was delivered by the parties thereto.

18. The ASA Amendment was delivered by the parties thereto.

B. WALSTON DELIVERED TO DGF:

1. Certified checks in the amounts of $8,100,000 and $8,600,000, respectively, representing full payment for 810 shares of DGF Preferred Stock issued to Walston and the DGF Debentures purchased by Walston.

2. A certified check in the amount of $3,000,000 representing the advance payment pursuant to Section 8 of the Clearing Agreement.

3. The following documents:

a. Certificate of Secretary of Walston, as to the following:

(i) Restated Certificate of Incorporation of Walston, certified by the Secretary of State of Delaware on June 28, attached thereto as Exhibit A.

(ii) By-Laws of Walston, attached thereto as Exhibit B.

(iii) Resolutions of the Board of Directors of Walston, attached thereto as Exhibit C.

(iv) Form of Written Consent to Amendment of Certificate of Incorporation of Walston, attached thereto as Exhibit D.

(v) Form of Certificate of Walston filed with the Secretary of State of Delaware, pursuant to Section 151 of the Delaware General Corporation Law, attached thereto as Exhibit E.

(vi) Incumbency of Officers of Walston.

(vii) Form of Walston Preferred Stock Certificate, attached thereto as Exhibit F.

(viii) Compliance with Section 228 of Delaware General Corporation Law.

b. Certificate, dated June 28, of the Secretary of State of Delaware as to the good standing and payment of taxes by Walston.

c. Certificate, dated June 29, of the Secretary of State of New York as to the good standing of Walston, together with confirming telegrams.

d. Certificate, dated July 3, of the New York State Department of Taxation and Finance as to the payment of taxes by Walston, together with a confirming telegram.

C. DGF DELIVERED TO WALSTON:

1. Certificate representing 810 shares of DGF Preferred Stock pursuant to the Capital Agreement.

2. Two DGF Debentures, one in the principal amount of $5,733,333 and one in the principal amount of $2,866,667.

3. Certificate of the Treasurer of DGF as to deposit by Perot of bonds having a net capital value of (i) $7,604,500 pursuant to the ASA Agreement and (ii) $5,200,000 as collateral under the Perot SDN.

4. The following documents:

a. Certificate of Secretary of DGF as to the following:

(i) Resolutions of the Board of Directors of DGF, attached thereto as Exhibit A.

(ii) Resolutions of the stockholders of DGF, attached thereto as Exhibit B.

(iii) Incumbency of Officers of DGF.

(iv) Certificate of Incorporation of DCF, certified by the Secretary of State of Delaware on June 28, attached thereto as Exhibit C.

(v) By-Laws of DGF, attached thereto as Exhibit D.

(vi) Form of Certificate of DGF Preferred Stock, attached thereto as Exhibit E.

b. Certificate, dated June 28, of the Secretary of State of Delaware as to the good standing of and payment of taxes by DGF.

c. Certificate, dated June 29, of the Secretary of State of New York as to the good standing of DGF, together with confirming telegrams.

d. Certificate, dated July 3, of the New York State Department of Taxation and Finance as to the payment of taxes by DGF, together with a confirming telegram.

e. Certificate of the Secretary of DGF as to the compliance with Section 228 of the Delaware General Corporation Law.

D. CHARLESTON DELIVERED TO WALSTON:

1. Resolutions adopted by the Board of Directors of Charleston on June 29, certified by the Secretary of Charleston.

2. Certificate as to the incumbency and signatures of the Officers of Charleston acting on its behalf at the Closing.

E. EXCHANGE OF PREFERRED STOCK OF WALSTON.

1. Charleston delivered to Walston certificates representing 398,803 shares of the Series A Convertible Preferred Stock, par value $5.00 per share, of Walston, together with a stock power relating thereto executed in blank by Charleston, pursuant to the Charleston Amendment.

2. Walston delivered to Charleston a certificate representing 398,803 shares of Walston Preferred Stock, pursuant to the Charleston Amendment.

F. PEROT DELIVERED TO DGF:

1. The Perot SDN.

2. The Investment Letter.

G. Transfers of Securities.

1. On July 2, certificates representing the DGF Proprietary Securities, either endorsed in blank or accompanied by transfer powers endorsed in blank, were transported to Jersey City for the Closing and were transferred to Walston by DGF and delivered by Walston to DGF as custodian for the account of Walston.

2. The Walston Customers Securities were deemed transferred from Walston to DGF for the account of Walston customers.

3. The Walston Proprietary Securities were deemed transferred from Walston to DGF for the account of Walston.

4. The stock certificates included among the securities referred to in paragraphs 2 and 3 above each had impressed thereon the customary stamp certificate authorized by the New York State Tax Commission in Reg. Sec. 444.1.

H. Arrangements Between Walston, BA and SNB.

1. The BA Pledge Agreement was delivered by the parties thereto.

2. Walston delivered a DGF Debenture in the amount of $2,866,667 to BA pursuant to the BA Pledge Agreement.

3. The BA Priority Agreement was delivered by the parties thereto.

4. The SNB Pledge Agreement was delivered by the parties thereto.

5. Walston delivered a DGF Debenture in the amount of $5,733,333 to SNB pursuant to the SNB Pledge Agreement.

6. The SNB Priority Agreement was delivered by the parties thereto.

I. Delaware Filings.

1. DGF caused to be filed with the Secretary of State of Delaware the documents referred to in paragraphs 3 and 5 of Section A, Part II of this Closing Memorandum.

2. Walston caused to be filed with the Secretary of State of Delaware the documents referred to in paragraphs 4 and 5 of Section B, Part II of this Closing Memorandum.

V

Events Occurring Subsequent to the Closing

A. DGF Change of Name.

As soon as practicable after the Closing, DGF will change its name as contemplated by the Master Agreement.

B. Certificates Respecting Name Changes.

1. As soon as practicable after the Closing, a consent permitting Walston to use the name "duPont" will be filed with the office of the New York Department of State.

2. As soon as practicable after the Closing, Walston and DGF each will make appropriate filings with the authorities of the various states in which it is qualified to transact business as a foreign corporation to reflect the change in its name.

C. DGF and Walston Corporate Action.

As soon as practicable after the Closing, Walston's Board of Directors will accept the resignations of seven Directors and elect and qualify the following persons to fill such vacancies: Ralph W. Williams, Jr., Allan Cymrot, Fred L. Heyes, Daniel D. Jackson, Jerome D. Rosenstein, Edward Saville and H. Richard Walker. The Board of Directors will also appoint William D. Fleming and Ralph W. Williams, Jr., to the Executive Committee of Walston.

D. Further Action.

As soon as practicable after the Closing, DGF and Walston will implement procedures contemplated by the Master Agreement and the Ancillary Agreements to give final effect to the provisions of such agreements, including but not limited to, computation of the purchase price of the duPont and Walston assets transferred at the Closing, the transfer of exchange seats of Walston to duPont and obtaining additional consents necessary for the assignment of leases respecting the duPont transfer of offices.

E. WSL Corporate Action.

As soon as practicable after the Closing, the Board of Directors of WSL will approve and ratify the WSL Amendment and WSL will deliver to DGF and Walston resolutions adopted by the Board of Directors of WSL to that effect, certified by the Secretary of WSL,

together with a certificate as to the incumbency and signatures of the officers of WSL acting on its behalf.

F. NYSE.

1. As soon as practicable after the Closing, DGF and Walston will confirm to the NYSE the consummation of the transaction and the changes in their respective names.

2. As soon as practicable after the Closing, DGF and Walston will furnish the NYSE with such supplementary documentation as may be requested by the NYSE.

G. AMEX.

1. As soon as practicable after the Closing, DGF and Walston will confirm to the AMEX the consummation of the realignment and the changes in their respective names.

2. As soon as practicable after the Closing, DGF and Walston will furnish the AMEX with such supplementary documentation as may be requested by the AMEX.

H. 1934 Act Registrations.

As soon as practicable after the Closing, DGF and Walston will make appropriate filings with the SEC under the Securities Exchange Act of 1934 reflecting the changes in their respective names and in their respective personnel.

I. NASD Registrations.

As soon as practicable after the Closing, DGF and Walston will make appropriate filings with NASD to reflect the consummation of the realignment.

J. "Blue Sky" Registrations.

As soon as practicable after the Closing, DGF and Walston will notify the "Blue Sky" Commissions of the several states of the changes in their respective names and personnel and will make appropriate filings in a timely manner.

K. Margin Accounts.

Commencing promptly after July 2, DGF, with the cooperation of Walston, will distribute new margin agreements in the DGF form to former Walston margin account customers.

[CONFORMED COPY]

MASTER AGREEMENT

MEMORANDUM OF AGREEMENT dated as of July 2, 1973, by and among WALSTON & Co., INC., a corporation organized under the laws of the State of Delaware ("Walston"), DUPONT GLORE FORGAN INCORPORATED, a corporation organized under the laws of the State of Delaware ("duPont"), PHM & Co., a Texas limited partnership ("PHM"), and CHARLESTON INVESTMENT COMPANY, a corporation organized under the laws of the State of Delaware ("Charleston").

WITNESSETH:

WHEREAS, Walston and duPont are engaged in the securities brokerage and related businesses, and each has its own customers, customer accounts and salesmen and each executes and clears orders received from its respective customers to buy and sell securities, commodities and options with respect thereto; and

WHEREAS, the parties hereto wish to enter into various agreements for the purpose of carrying out a realignment of the respective businesses of duPont and Walston; and

WHEREAS, this Agreement is intended to provide the general framework for the realignment, to contain general undertakings, representations and covenants with respect thereto, and to have as exhibits the forms of various agreements to implement such realignment;

NOW, THEREFORE, in consideration of the premises and the respective representations and mutual covenants of the parties herein contained, it was agreed as follows:

ARTICLE I

GENERAL

1.1 REALIGNMENT. On the date hereof duPont, Walston, PHM and Charleston executed and delivered this Agreement and, as applicable, the agreements, amendments to agreements, waivers, consents and acknowledgments in the forms annexed hereto and referred to in

Article III hereof (collectively the "Ancillary Agreements"), for the purpose of carrying out a realignment of the businesses of duPont and Walston upon and subject to the terms and conditions of this Agreement and the Ancillary Agreements.

1.2 CONTEMPLATED BUSINESS COMBINATION. duPont and Walston agreed following the consummation of the realignment of their respective businesses pursuant to this Agreement and the Ancillary Agreements, to explore thoroughly the feasibility and desirability of a further combination of their businesses. If, within one year following the Closing Date (as hereinafter defined), either duPont or Walston determines that no such further business combination is feasible or desirable, each agrees to take such appropriate action, prior to July 2, 1974, as may be required by the then applicable rules and regulations of the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("AMEX") or any other governmental or regulatory authority having jurisdiction to assure that the arrangements consummated between duPont and Walston pursuant to this Agreement and the Ancillary Agreements conform to such rules and regulations, including, for example, Walston becoming a holding company and duPont converting its capital stock to freely transferable securities.

1.3 DEFINITION OF AFFILIATE. For purposes of this Agreement and each of the Ancillary Agreements, any person or entity (i) whose stock ownership immediately prior to the Closing (as hereinafter defined) would have been attributed to another person or entity under Section 318(a) of the Internal Revenue Code of 1954, as amended, or (ii) who, immediately prior to the Closing, controlled, was controlled by or was under common control with, whether directly or through one or more intermediaries, another person or entity, shall be deemed an affiliate of such other person or entity.

ARTICLE II

CLOSING

2.1 CLOSING. The execution and delivery of this Agreement and the Ancillary Agreements and the closing (the "Closing") of the transactions contemplated in this Agreement and the Ancillary Agree-

ments took place at the offices of First Jersey National Bank & Trust Company in Jersey City, New Jersey, at 9:00 a.m. local time on Monday, July 2, 1973 (the date of the Closing being hereinafter called the "Closing Date"). All action taken at the Closing was deemed to have been taken simultaneously and to have been effective as of the opening of business on July 2, 1973.

ARTICLE III

Ancillary Agreements

3.1 Clearance. In order to authorize duPont to act as the sole clearing agent for Walston and its accounts, and to render related services, duPont and Walston, on the Closing Date, executed and delivered the Clearing and Related Services Agreement in the form attached hereto as Exhibit 1 (the "Clearing Agreement").

3.2 Transfer. In order to bring about the transfer from duPont to Walston and from Walston to duPont of certain assets, properties and business of the other and the assumption by each of certain liabilities and obligations of the other with respect thereto, duPont and Walston, on the Closing Date, executed and delivered the Transfer Agreement in the form attached hereto as Exhibit 2 (the "Transfer Agreement").

3.3 Capital Infusion. In order for duPont and Walston to have, as of the opening of business on the Closing Date, ratios of aggregate indebtedness to net capital (as defined in the Rules of the NYSE) of approximately 9.5:1 and 1:1, respectively, duPont, Walston and PHM, on the Closing Date, executed and delivered the Capital Agreement in the form attached hereto as Exhibit 3 (the "Capital Agreement").

3.4 Electronic Data Processing. In order to provide electronic data processing ("EDP") services to duPont and to amend prior EDP services agreements between duPont and Electronic Data Systems Corporation, a Texas corporation ("EDSC"), and between Walston and E. D. Systems Corporation, a Texas corporation, which is a wholly-owned subsidiary of EDSC ("EDS"), duPont, Walston, EDSC and EDS, on the Closing Date, executed and delivered the Agreement for Electronic Data Processing Supplies and Services in the form attached hereto as Exhibit 4 (the "EDP Agreement").

3.5 WALSTON CONSENTS. In connection with Walston's execution, delivery and performance of this Agreement and the other Ancillary Agreements, (i) an Amendment dated as of July 2, 1973 to the Loan Agreement between Walston and the Bank of America National Trust and Savings Association was executed and delivered in the form attached hereto as Exhibit 5; (ii) an Amendment dated as of July 2, 1973 to the Loan Agreement between Walston and the Security National Bank was executed and delivered in the form attached hereto as Exhibit 6; and (iii) Walston and Charleston executed and delivered an Amendatory Agreement (the "Charleston Amendment") dated as of July 2, 1973 to the Purchase Agreement dated July 5, 1972, as amended, between them (the "Purchase Agreement"), in the form attached hereto as Exhibit 7.

3.6 PHM, ETC. CONSENTS. In connection with duPont's execution, delivery and performance of this Agreement and the other Ancillary Agreements, (i) a Consent and Acknowledgment dated as of July 2, 1973 under the Loan Agreement dated as of February 15, 1973 among PHM, Bank of America National Trust and Savings Association, and certain other banks, was executed and delivered in the form attached hereto as Exhibit 8; (ii) an Amendatory Agreement dated as of July 2, 1973 to the Letter of Credit Agreement between PHM, First National Bank in Dallas, et al., was executed and delivered in the form attached hereto as Exhibit 9; and (iii) an Amendatory Agreement dated as of July 2, 1973 to the Sixth, Seventh and Eighth Loan Agreements between The Wall Street Leasing Corporation and Chemical Bank New York Trust Company, was executed and delivered in the form attached hereto as Exhibit 10.

3.7 AMENDMENT OF CSI 2D SERIES PREFERRED STOCK. PHM and duPont executed and delivered a First Amendment to the agreement dated April 6, 1972 between duPont and PHM relating to the creation of the Certificate of Special Interest, Second Series (the "CSI 2d") in the form attached hereto as Exhibit 11 (the "CSI 2d Amendment").

3.8 LETTER AGREEMENT. Walston, duPont and PHM executed and delivered a Letter Agreement dated July 2, 1973 in the form attached hereto as Exhibit 12 (the "Letter Agreement").

3.9 PARI PASSU AGREEMENT. Walston, duPont, PHM and H. R. Perot executed and delivered a Pari Passu Agreement dated July 2, 1973 in the form attached hereto as Exhibit 13.

ARTICLE IV

INSTRUMENTS AND FURTHER ASSURANCES

4.1 On or before the Closing Date, duPont, Walston, PHM and Charleston executed and delivered other documents and instruments necessary or appropriate to carry out the intent of this Agreement and the Ancillary Agreements. duPont, Walston, PHM and Charleston each agreed from time to time after the Closing Date, upon the request of another party hereto and without further consideration, to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, documents and instruments as may be reasonably required more effectively to carry out and consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

ARTICLE V

APPROVALS AND CHANGE OF NAME

5.1 DUPONT. Prior to the Closing Date, the holders of a majority of the outstanding voting stock of duPont and the Board of Directors of duPont duly approved those matters contained in this Agreement and the Ancillary Agreements. duPont agreed that promptly following the Closing Date, duPont would take all such action as might be required to change its corporate name.

5.2 WALSTON. Walston duly convened a meeting of its Board of Directors prior to the Closing Date for the purpose of authorizing the transactions contemplated by this Agreement and the Ancillary Agreements. Concurrently with the Closing, Walston took all such action as was required to change its corporate name to "duPont Walston Incorporated."

ARTICLE VI

Management

6.1 Representation in Walston. On the Closing Date, Charleston and certain holders of Walston Common Stock executed and delivered agreements (collectively the "Voting Agreement") dated as of July 2, 1973 in the form attached hereto as Exhibit 14 and actions pursuant thereto were taken, including the election of members of the Board of Directors of Walston. In addition, duPont, Walston and Charleston agreed that so long as the Voting Agreement remains in effect, the Executive Committee of the Board of Directors of Walston shall consist of (a) a number of members who are Walston Nominees (as defined) under the Voting Agreement plus (b) an equal number of members who are designees of Charleston and/or duPont (the latter as acceptable to Charleston) to the Board of Directors of Walston. It was agreed that the Executive Committee of the Board of Directors of Walston would initially consist of a total of ten (10) members.

6.2 Walston Officer. On or prior to the Closing Date, Walston elected Walter E. Auch as its President and Chief Executive Officer, effective immediately after the Closing.

6.3 Representation in duPont. Effective upon the Closing Date and immediately after the Closing, PHM and duPont each agreed that until the earliest of (i) 5:00 p.m. New York City time on July 2, 1983, or (ii) such time as a registered public offering of its Common Stock shall have been consummated, or (iii) the date on which the Clearing Agreement is terminated, duPont shall cause at least one designee of Walston to be elected to and remain a member of a five-member Board of Directors of duPont, and at least one designee of Walston to be appointed to and remain a member of a four-member Executive Committee of the Board of Directors of duPont. PHM and duPont each agreed that in the event duPont increases its Board of Directors to more than five members it will cause 20% of the total number of directors to be designees of Walston and that in the event the Board of Directors increases the size of the Executive Committee PHM and duPont each will use its best efforts to cause 25% of the total number of members to be designees of Walston. George Thomson, the initial Walston des-

ignee, was elected as a member of the Board of Directors of duPont and Chairman of its Executive Committee, effective immediately after the Closing.

ARTICLE VII

Representations and Warranties

In addition to the particular representations and warranties contained in various of the Ancillary Agreements, the following representations and warranties of duPont and Walston were deemed (i) made as at the time immediately prior to the Closing and (ii) included in and applicable to the Clearing Agreement, the Transfer Agreement and the Capital Agreement as though fully set forth therein, as well as to this Agreement. However, in the event of a material misrepresentation or material breach of warranty, neither this Agreement nor any of the Ancillary Agreements may be rescinded or set aside, the sole remedy therefor being direct, proximate damages, excluding consequential or punitive damages. The parties to this Agreement also agreed that in the event of any claimed breach of any representation or warranty or nonperformance of any covenant contained herein or in any Ancillary Agreement, the party claiming such breach or nonperformance shall give notice thereof to the party or parties alleged to have committed such breach or failure of performance and afford such party or parties a reasonable time to cure such breach or nonperformance.

7.1 duPont's Representations and Warranties. duPont represented and warranted to Walston, PHM and Charleston as follows:

(a) *Organization, Good Standing, Power, etc.* duPont is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware; is qualified and authorized to do business in all other jurisdictions in which it is required to be so qualified and authorized by reason of the nature of the business to be conducted by it pursuant to the Clearing Agreement or the properties owned, leased or operated by it and where such failure to be so qualified would have a material adverse effect on duPont's business taken as a whole; has all requisite power and authority to own, lease and operate its properties and to carry on its business as it will be conducted after the consummation of the transactions described herein and in the Ancillary Agreements,

and has all requisite power and authority to enter into this Agreement and the Ancillary Agreements and to perform its obligations hereunder and thereunder. The copies of the Certificate of Incorporation and By-Laws of duPont and the Certificate (the "Certificate") pursuant to Section 151 of the General Corporation Law of the State of Delaware establishing the Series Four Preferred Stock of duPont (the "Series Four Preferred") delivered by duPont to Walston at the Closing are complete and correct.

(b) *Authorization and Effect of Agreement.* The execution, delivery and performance of this Agreement and each of the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby by duPont have been duly and validly authorized by duPont, and will not (i) violate any existing material provision of law, statute, judgment, order, rule or regulation, applicable to duPont, or of any governmental or regulatory body, any national securities exchange, or the National Association of Securities Dealers, Inc. ("NASD"); (ii) conflict with or result in the breach of any material provision of or the termination of or constitute a material default under the Certificate of Incorporation, the Certificate or By-Laws of duPont or any indenture, mortgage, deed of trust, partnership agreement, joint venture agreement, or other instrument or agreement, to which duPont is a party or by which duPont or any material portion of its assets and properties is bound, except in respect of leases of real and personal property entered into by duPont and being assumed by Walston under the Transfer Agreement; (iii) constitute a violation of any order, judgment or decree to which duPont is a party or by which duPont or any material portion of its assets and properties is bound; (iv) result in the creation of any lien, charge or encumbrance upon any material portion of the properties or assets of duPont, including those transferred to Walston pursuant to the Transfer Agreement; or (v) result in the termination or modification of any registration, license, permit, statement or qualification of duPont except to the extent that amendments or renewals may be required under domestic (federal or state) or foreign securities laws as a result of the transactions contemplated in this Agreement or any of the Ancillary Agreements.

(c) *Capitalization.* duPont's authorized capital stock consists of 7,000,000 shares of Class A Common Stock, par value $.10 per share, of which 3,092,745 shares are duly and validly issued and outstanding, fully paid and non-assessable, 1,500,000 shares of Class B Common Stock, par value $.10 per share, no shares of which have been issued and 500,000 shares of Preferred Stock, par value $1.00 per share, issuable in series, no shares of which have been issued and 2,000 shares of which have been authorized for issuance as Series Four Preferred Stock. There is no existing option, warrant, call or commitment to which duPont is a party requiring, and there is not outstanding any security convertible into or exchangeable for securities of duPont outstanding which, upon conversion or exchange, would require the issuance of any additional Common Stock or other securities convertible into or exchangeable for Common Stock or any other equity security of duPont of any class or character other than (i) rights under that certain agreement dated March 17, 1971, by and among F. I. duPont Glore Forgan & Co., PHMFG Corporation and certain other persons (the "Parties in Interest"), as amended, granted to the Parties in Interest; (ii) rights granted to The Special Trust Fund of the NYSE pursuant to an agreement dated May 14, 1971, by and among PHM, Perhm Securities, Inc., the NYSE and The Special Trust Fund of the NYSE, as amended; (iii) rights granted to PHM pursuant to the CSI 2d, as amended by the CSI 2d Amendment; (iv) rights granted to employees of duPont under duPont's existing stock option plan; (v) rights granted to duPont employees under duPont's existing stock purchase plan; and (vi) rights granted under the Capital Agreement and the Letter Agreement. Copies of the foregoing agreements and plans were delivered to Walston.

(d) *Memberships.* duPont is a member corporation in good standing of the NASD, the NYSE, the AMEX, and of such other national securities exchanges, commodities exchanges and clearing associations as are reasonably required in the conduct of its business, and is registered as a broker-dealer with the Securities and Exchange Commission (the "SEC") and in the District of Columbia and the various states where required by law and the conduct of its business.

(e) *Compliance with Exchange Rules.* duPont is in compliance in all material respects with the Rules of the NYSE and AMEX and its aggregate indebtedness is not more than 1200 percent of its net capital, as determined under Rules 325 and 326 of the NYSE.

(f) *Taxes.* duPont has filed all tax returns required by law to be filed and has paid all taxes, assessments, and other governmental charges of like kind and nature levied upon duPont or any of its properties, assets, income or franchises which are due and payable, other than those presently payable without penalty or interest or those being contested in good faith.

(g) *Litigation.* To the best of duPont's knowledge, there is no litigation, proceeding or investigation pending before any court, securities exchange, or other governmental body, the NASD, or any private arbitration tribunal, or any thereof threatened, seeking to enjoin, or seeking damages in respect of, the transactions described in this Agreement or any of the Ancillary Agreements other than an investigation being conducted by the Antitrust Division of the Department of Justice. There is no order, decree or judgment of any kind in existence enjoining duPont from consummating the transactions described in this Agreement or any of the Ancillary Agreements.

(h) *Series Four Preferred Stock.* The shares of Series Four Preferred Stock of duPont to be issued to Walston pursuant to the Capital Agreement, when issued and paid for as contemplated in the Capital Agreement, will be validly issued, fully paid and non-assessable.

7.2 WALSTON'S REPRESENTATIONS AND WARRANTIES. Walston represented and warranted to duPont, PHM and Charleston as follows:

(a) *Organization, Good Standing, Power, etc.* Walston is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified and authorized to do business as a foreign corporation in all other jurisdictions in which it is required to be so qualified and authorized by reason of the nature of the business conducted by it or the properties owned,

leased or operated by it and where such failure to be so qualified and authorized would have a material adverse effect on Walston's business taken as a whole; has all requisite power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted; and has all requisite power and authority to enter into this Agreement and each of the Ancillary Agreements and to perform its obligations hereunder and thereunder. The copies of the Restated Certificate of Incorporation and By-Laws of Walston and the Certificate pursuant to Section 151 of the General Corporation Law of the State of Delaware establishing the Series B Convertible Preferred Stock of Walston (the "Series B Certificate"), delivered by Walston to duPont at the Closing are complete and correct.

(b) *Authorization and Effect of Agreement.* The execution, delivery and performance of this Agreement and each of the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby by Walston have been duly and validly authorized by Walston, and will not (i) violate any existing material provision of law, statute, judgment, order, rule or regulation, applicable to Walston, or of any governmental or regulatory body, any national securities exchange or the NASD; (ii) conflict with or result in the breach of any material provision of or the termination of or constitute a material default under the Restated Certificate of Incorporation, Series B Certificate or By-Laws of Walston or any indenture, mortgage, deed of trust, partnership agreement, joint venture agreement, or other instrument or agreement to which Walston is a party or by which Walston or any material portion of its assets and properties is bound; (iii) constitute a violation of any order, judgment or decree to which Walston is a party or by which Walston or any material portion of its assets and properties is bound; (iv) result in the creation of any lien, charge or encumbrance upon any material portion of the properties or assets of Walston; or (v) result in the termination or modification of any registration, license, permit, statement or qualification of Walston except to the extent that amendments or renewals may be required under domestic (federal or state) or foreign securities laws as a result of the transactions contemplated in this Agreement or any of the Ancillary Agreements.

(c) *Capitalization.* Walston's authorized capital consists of 14,000,000 shares of Common Stock, par value $5 per share, of which 3,205,200 shares are duly and validly issued and outstanding, fully paid and non-assessable and 3,000,000 shares of Series Preferred Stock, par value $5 per share, of which (i) 398,803 shares of Series A Convertible Preferred Stock are duly and validly issued and outstanding, fully paid and non-assessable and (ii) 398,803 shares of Series B Convertible Preferred Stock (the "Series B Preferred Stock") are authorized for issuance. There is no existing option, warrant, call or commitment to which Walston is a party requiring, and there is not outstanding any security convertible into or exchangeable for securities of Walston outstanding which, upon conversion or exchange, would require the issuance of any additional Common Stock or other securities convertible into or exchangeable for Common Stock or any other equity security of Walston of any class or character other than (i) warrants to purchase 100,000 shares of Common Stock issued to William K. Gayden; (ii) warrants to purchase 1,131,747 shares of Common Stock issued to Charleston; (iii) conversion rights under $200,000 principal amount of Senior Subordinated Convertible Debentures due December 31, 1977 to September 30, 1982; (iv) conversion rights of the Series A Convertible Preferred Stock; (v) shares to be issued pursuant to an Agreement and Plan of Reorganization dated August 18, 1972 among Walston, Margot Perot, H. Ross Perot and Charleston; and (vi) rights to purchase Series B Preferred Stock pursuant to the Charleston Amendment.

(d) *Memberships.* Walston is a member in good standing of the NASD, the NYSE, the AMEX, and such other national securities exchanges, commodities exchanges and clearing associations as are reasonably required in the conduct of its business, and is registered as a broker-dealer with the SEC and in the District of Columbia and the various states where required by law and the conduct of its business.

(e) *Compliance with Exchange Rules.* Walston is in compliance in all material respects with the Rules of the NYSE and AMEX and its aggregate indebtedness is not more than 1200 percent of its net capital, as determined under Rules 325 and 326 of the NYSE.

(f) *Taxes.* Walston has filed all tax returns required by law to be filed and has paid all taxes, assessments and other governmental charges of like kind and nature levied upon Walston or any of its properties, assets, income or franchises which are due and payable, other than those presently payable without penalty or interest, or those being contested in good faith.

(g) *Litigation.* To the best of Walston's knowledge, there is no litigation, proceeding or investigation pending before any court, securities exchange, or other governmental body, the NASD, or any private arbitration tribunal, or any thereof threatened, seeking to enjoin, or seeking damages in respect of, the transactions described in this Agreement other than an investigation being conducted by the Antitrust Division of the Department of Justice. There is no order, decree or judgment of any kind in existence enjoining Walston from consummating the transactions described in this Agreement or any of the Ancillary Agreements.

(h) *Series B Preferred Stock.* The shares of Series B Preferred Stock to be issued to Charleston pursuant to the Charleston Amendment, when issued in exchange for the shares of Series A Convertible Preferred Stock of Walston as contemplated in the Charleston Amendment, will be validly issued, fully paid and nonassessable.

(i) *Investment Representation.* Walston will acquire the duPont securities referred to in the Capital Agreement for its own account for investment and not with a view to, or for sale in connection with, any public distribution thereof, and there has been adequately explained and described to it the restrictions imposed by the Securities Act of 1933, as amended (the "Act"), and Rules 144 and 237 thereunder on the sale, transfer or other disposition by it of such securities including, without limitation, those restrictions arising from the fact that such duPont securities have not been registered under the Act and duPont has no obligation to do so.

7.3 PHM's Representations and Warranties. PHM represented and warranted to duPont, Walston and Charleston as follows:

(a) *Organization, Power, etc.* PHM is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas; and has all requisite power and

authority to enter into this Agreement and such of the Ancillary Agreements to which PHM is a party and to perform its obligations hereunder and thereunder.

(b) *Authorization and Effect of Agreement.* The execution, delivery and performance of this Agreement and each of the Ancillary Agreements to which PHM is a party and the consummation of the transactions contemplated hereby and thereby by PHM have been duly and validly authorized by PHM, and will not (i) violate any existing material provision of law, statute, judgment, order, rule or regulation, applicable to PHM, of any governmental or regulatory body, any national securities exchange, or the NASD; (ii) conflict with or result in the breach of any material provision of or the termination of or constitute a material default under the Amended Limited Partnership Agreement of PHM or any indenture, mortgage, deed of trust, partnership agreement, joint venture agreement, or other instrument or agreement, to which PHM is a party or by which PHM or any material portion of its assets and properties is bound; (iii) constitute a violation of any order, judgment or decree to which PHM is a party or by which PHM or any material portion of its assets and properties is bound; or (iv) result in the creation of any lien, charge or encumbrance upon any material portion of the properties or assets of PHM.

7.4 CHARLESTON'S REPRESENTATIONS AND WARRANTIES. Charleston represented and warranted to duPont, PHM and Walston as follows:

(a) *Organization, Power, etc.* Charleston is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware; and has all requisite power and authority to enter into this Agreement, each of the Ancillary Agreements to which it is a party and the Voting Agreement (referred to in Section 6.1) and to perform its obligations hereunder and thereunder.

(b) *Authorization and Effect of Agreement.* The execution, delivery and performance of this Agreement, each of the Ancillary Agreements to which Charleston is a party and the Voting Agreement (referred to in Section 6.1) and the consummation of the transactions contemplated hereby and thereby by Charleston have been duly and validly authorized by Charleston, and will not (i)

violate any existing material provision of law, statute, judgment, order, rule or regulation, applicable to Charleston, or of any governmental or regulatory body, any national securities exchange or the NASD; (ii) conflict with or result in the breach of any material provision of or the termination of or constitute a material default under the Certificate of Incorporation or By-Laws of Charleston or any indenture, mortgage, deed of trust, partnership agreement, joint venture agreement, or other instrument or agreement to which Charleston is a party or by which Charleston or any material portion of its assets and properties is bound; (iii) constitute a violation of any order, judgment or decree to which Charleston is a party or by which Charleston or any material portion of its assets and properties is bound; or (iv) result in the creation of any lien, charge or encumbrance upon any material portion of the properties or assets of Charleston.

(c) *Investment Representation.* Charleston will acquire the Series B Preferred Stock being exchanged by it pursuant to the Charleston Amendment for its own account for investment and not with a view to, or for sale in connection with, any public distribution thereof, and there has been adequately explained and described to it the restrictions imposed by the Act, and Rules 144 and 237 thereunder on the sale, transfer or other disposition by it of the Series B Preferred Stock acquired by it pursuant to the Charleston Amendment, including, without limitation, those restrictions arising from the fact that the Series B Preferred Stock has not been registered under the Act and Walston has no obligation to do so, other than as provided in the Purchase Agreement.

(d) *Title.* Charleston has good and marketable title to the Series A Preferred Stock being exchanged by it pursuant to the Charleston Amendment free and clear of any pledges, mortgages, liens, charges, security interests or other encumbrances.

ARTICLE VIII

Covenants of duPont

duPont covenanted and agreed with Walston that:

8.1 Consents. duPont will (i) use its best efforts to obtain all consents and approvals of governmental agencies and self-regulatory

authorities necessary for the consummation by duPont of the transactions contemplated by this Agreement and the Ancillary Agreements; (ii) file, in correct and complete form, all reports, returns and other forms and all other documents required by such agencies and authorities to be filed by duPont in connection with such transactions; and (iii) deliver to Walston copies of all such consents and approvals which are obtained in writing by duPont and of all such reports, returns, forms and other documents which are filed by duPont with such agencies and authorities.

8.2 FINANCIAL STATEMENTS. As long as the Clearing Agreement is in effect, duPont will furnish to Walston (i) no later than 5 days after the filing thereof with the NYSE a signed copy of its Joint Regulatory Report of Broker-Dealer's Financial and Operational Condition as filed with the NYSE; and (ii) no later than 10 days after the filing with the NYSE of the answers to the Exchange Financial Questionnaire, a copy of all schedules and financial statements required by and filed with the NYSE pursuant to the audit requirements of the NYSE, and within 5 days after their becoming available its consolidated balance sheet as of the date of the Financial Questionnaire and the related statements of consolidated operations, consolidated capital surplus and retained earnings and consolidated changes in financial position for the period from the date as of which the last Financial Questionnaire was prepared until the date as of which the current Financial Questionnaire was prepared, together with copies of the reports of independent public accountants of recognized standing with respect thereto, as well as a detailed capital computation, a detailed list of aggregate indebtedness, a separate schedule indicating all difference and suspense accounts with a notation stating the reserve established for each, all as of such audit date certified by an authorized financial officer of duPont unless and except to the extent certified by such accountants.

8.3 TAXES. duPont will duly pay and discharge all taxes, assessments and governmental charges levied upon it or against its properties prior to the date on which penalties attach thereto, except to the extent that the same shall be contested in good faith by appropriate proceedings by duPont.

8.4 MEMBERSHIPS. duPont, or a subsidiary corporation of duPont all of whose voting capital stock is owned by duPont or by duPont and Walston or an affiliate of either, will remain a member corporation of the NYSE, the NASD and the AMEX; will continue to have at least one a-b-c membership in both the NYSE and the AMEX; will continue to be registered as a broker-dealer with the SEC; and will continue in full force and effect all other memberships, registrations, franchises and permits reasonably necessary for it to perform the services for Walston described in the Clearing Agreement.

8.5 RECORDS. duPont will at all times keep current books of record and account in which to the best of the knowledge of its senior management true and correct entries will be made of its dealings or transactions in relation to its business and affairs, and duPont will provide reasonable protection against loss or damage to such books of record and account.

8.6 INSPECTION. As long as the Clearing Agreement is in effect, duPont will allow representatives of Walston to visit and inspect its premises, to examine its books of record and account and to discuss its affairs, finances and accounts with its officers, all at such reasonable times and as often as Walston may reasonably request.

ARTICLE IX

COVENANTS OF WALSTON

Walston covenanted and agreed with duPont that:

9.1 CONSENTS. Walston will (i) use its best efforts to obtain all consents and approvals of governmental agencies and self-regulatory authorities necessary for the consummation by Walston of the transactions contemplated by this Agreement and the Ancillary Agreements; (ii) file, in correct and complete form, all reports, returns and other forms and all other documents required by such agencies and authorities to be filed by Walston in connection with such transactions; and (iii) deliver to duPont copies of all such consents and approvals which are obtained in writing by Walston and of all such reports, returns, forms and other documents which are filed by Walston with such agencies and authorities.

9.2 FINANCIAL STATEMENTS. As long as the Clearing Agreement is in effect, Walston will furnish to duPont (i) no later than 5 days after the filing thereof with the NYSE a signed copy of a complete Joint Regulatory Report of Broker-Dealer's Financial and Operational Condition as filed with the NYSE; and (ii) no later than 10 days after the filing with the NYSE of the answers to the Exchange Financial Questionaire, a copy of all schedules and financial statements required by and filed with the NYSE pursuant to the audit requirements of the NYSE, and within 5 days after their becoming available, its consolidated balance sheet as of the date of the Financial Questionnaire and the related statements of consolidated operations, consolidated capital surplus and retained earnings and consolidated changes in financial position for the period from the date as of which the last Financial Questionnaire was prepared until the date as of which the current Financial Questionnaire was prepared, together with copies of the reports of independent public accountants of recognized standing with respect thereto, as well as a detailed capital computation, a detailed list of aggregate indebtedness, a separate schedule indicating all difference and suspense accounts with a notation stating the reserve established for each, all as of such audit date certified by an authorized financial officer of Walston unless and except to the extent certified by such accountants.

9.3 TAXES. Walston will duly pay and discharge all taxes, assessments and governmental charges levied upon it or against its properties prior to the date on which penalties attach thereto, except to the extent that the same shall be contested in good faith by appropriate proceedings by Walston.

9.4 MEMBERSHIPS. Walston, or a subsidiary corporation of Walston all of whose voting capital stock is owned by Walston or by Walston and duPont or an affiliate of either, will remain a member corporation of the NYSE, the NASD and the AMEX; will continue to have at least one a-b-c membership in both the NYSE and the AMEX; will continue to be registered as a broker-dealer with the SEC; and will continue in full force and effect all other memberships, registrations, franchises and permits reasonably necessary for the conduct of its business as a securities broker-dealer.

9.5 RECORDS. Walston will at all times keep current books of record and account in which to the best of the knowledge of its senior

management true and correct entries will be made of its dealings or transactions in relation to its business and affairs, and Walston will provide reasonable protection against loss or damage to such books of record and account.

9.6 INSPECTION. As long as the Clearing Agreement is in effect, Walston will allow representatives of duPont to visit and inspect its premises, to examine its books of record and account and to discuss its affairs, finances and accounts with its officers, all at such reasonable times and as often as duPont may reasonably request.

ARTICLE X

MISCELLANEOUS

The following provisions were deemed included in and applicable to this Agreement and to each of the Ancillary Agreements (other than the EDP Agreement) as though fully set forth therein:

10.1 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. The parties agreed that all of the representations, warranties, covenants and agreements of duPont and Walston contained in this Agreement or in any of the Ancillary Agreements survived the Closing.

10.2 WAIVERS. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

10.3 BULK SALES LAW. With respect to this Agreement, the Transfer Agreement and the Clearing Agreement, duPont waived compliance by Walston and Walston waived compliance by duPont with the applicable bulk sales law, if any, of any jurisdiction in which duPont or Walston, as the case may be, on the Closing Date (i) was doing business, (ii) had property located or (iii) had existing creditors and, in consideration thereof, duPont agreed to indemnify and hold Walston harmless from and against any and all loss, liability and expense re-

sulting from or arising out of any claim or demand of any creditor of duPont based upon the failure of duPont or Walston to comply with the provision of any such bulk sales law and Walston agreed to indemnify and hold duPont harmless from and against any and all loss, liability and expense resulting from or arising out of any claim or demand of any creditor of Walston based upon the failure of Walston or duPont to comply with the provisions of any such bulk sales law. Nothing contained in this Section 10.3 shall be construed to limit any rights to indemnification contained in the Transfer Agreement or the Clearing Agreement.

10.4 NOTICES. All notices, requests, demands and other communications which are required to be or may be given under this Agreement and the Ancillary Agreements shall be in writing and shall be deemed to have been given if delivered or mailed by first class mail, postage prepaid,

(a) if to Walston, to:
Walston & Co., Inc.
77 Water Street
New York, New York 10005
Attention of President

(b) if to duPont, to:
duPont Glore Forgan Incorporated
77 Water Street
New York, New York 10005
Attention of President

(c) if to PHM (or any affiliate of PHM), to:
1300 EDS Center
Exchange Park,
Dallas, Texas 75235
Attention of H. Ross Perot

(d) if to Charleston, to:
Charleston Investment Company
1300 EDS Center
Exchange Park
Dallas, Texas 75235
Attention of President

or to such other address or person as the parties shall have specified by notice in writing to the others.

10.5 BENEFITS AND BURDENS. This Agreement and the Ancillary Agreements shall be binding upon and shall inure solely to the benefit of the parties hereto and thereto and their respective successors and assigns. Nothing in this Agreement or the Ancillary Agreements, expressed or implied, is intended to and shall not under any circumstances create any enforceable right or benefit in any other person whatsoever, nor shall any other person whatsoever be entitled to have any claim, cause of action or right based upon or arising out of the existence of this Agreement and the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby.

10.6 ASSIGNABILITY. This Agreement and the Ancillary Agreements shall not be assignable by any party hereto or thereto without the prior written consent of the other parties hereto or thereto, except as expressly otherwise provided herein or therein or by operation of law or incident to a transfer of all or substantially all of the assets of any party hereto or thereto.

10.7 SEVERABILITY. The invalidity of all or any part of any section of this Agreement or any section of any Ancillary Agreement or of any one or more of the Ancillary Agreements as a whole, shall not render invalid the remainder of this Agreement and the Ancillary Agreements or the remainder of such section, or the remainder of the Ancillary Agreements as a whole, as the case may be, unless the section or agreement held invalid is fundamental to the realignment of the businesses of duPont and Walston or otherwise materially adversely affects the essence of the agreements taken as a whole. The parties hereto agreed that the invalidity or lack of enforceability, for any reason, of the voting rights of the Series B Preferred Stock issued to Charleston will be deemed to materially adversely affect the essence of this Agreement and the Ancillary Agreements as a whole from the standpoint of duPont and Charleston. In addition, the parties hereto agreed that a failure by Charleston to fulfill its obligations under the Voting Agreement will be deemed to materially adversely affect the essence of this Agreement and the Ancillary Agreements as a whole from the standpoint of Walston.

10.8 Section and Other Headings. The section and other headings contained in this Agreement and the Ancillary Agreements are for reference purposes only and shall not affect the meaning or interpretation of this Agreement and the Ancillary Agreements.

10.9 Counterparts. This Agreement and the Ancillary Agreements may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

10.10 Governing Law. This Agreement and the Ancillary Agreements shall be construed and enforced in accordance with the laws of the State of New York.

10.11 Arbitration. duPont and Walston agreed to submit any dispute arising under this Agreement and the Ancillary Agreements or with respect to any of the transactions contemplated thereby to arbitration, in accordance with the provisions of the Constitution of the NYSE and the Rules of the NYSE, except that disputes under the Clearing Agreement relating to transactions executed on an exchange other than on the NYSE, which has in its constitution or rules provisions compelling arbitration among members thereof, shall be submitted to arbitration in accordance with the Constitution and Rules of such other exchange.

10.12 No Reliance Upon NYSE Standing. Each of the parties to this Agreement irrevocably agreed that it was not entering into this Agreement or any of the Ancillary Agreements in reliance upon the standing as a member organization of the NYSE of any party hereto that is a member organization of the NYSE or upon the NYSE's surveillance of the financial position of, or compliance with the Constitution, Rules and practices of the NYSE by, any such party. No party hereto relied upon the NYSE to provide any information concerning or relating to any other party hereto, and each party agreed that the NYSE has no responsibility to disclose to any party hereto any information concerning or relating to any other party hereto which the NYSE had, as of the Closing Date, or may have at any time thereafter. Each party hereto agreed that neither the NYSE, its Special Trust Fund, nor any director, officer, trustee or employee of the NYSE or said Trust Fund shall be

liable to such party with respect to the obligations of any other party to this Agreement.

10.13 RELATIONSHIP OF PARTIES. The parties hereto agreed that neither this Agreement nor any Ancillary Agreement nor consummation or performance of the transactions contemplated hereunder or thereunder shall be deemed to create a partnership, joint venture or agency relationship among any of the parties hereto.

IN WITNESS WHEREOF, the parties entered into this Agreement as of the day and year first above written.

DUPONT GLORE FORGAN INCORPORATED

By: MORTON MEYERSON
President

WALSTON & CO., INC.

By: D. J. CULLEN
Chairman of the Board

PHM & Co.

By: H. R. PEROT
A General Partner

CHARLESTON INVESTMENT COMPANY

By: MERVIN L. STAUFFER
President

[CONFORMED COPY]

EXHIBIT 1
to
Master Agreement

CLEARING AND RELATED SERVICES AGREEMENT

AGREEMENT made as of July 2, 1973, by and between WALSTON & Co., INC., a corporation organized under the laws of the State of Delaware ("Walston"), and DUPONT GLORE FORGAN INCORPORATED, a corporation organized under the laws of the State of Delaware ("duPont").

WITNESSETH:

WHEREAS, Walston and duPont are engaged in securities brokerage and related businesses, and each has its own customers, customer accounts and salesmen and each executes and clears orders received from its respective customers to buy and sell securities, commodities and options with respect thereto; and

WHEREAS, Walston and duPont are parties to an agreement dated as of July 2, 1973 (the "Master Agreement") pursuant to which Walston and duPont are to enter into certain agreements for the purpose of carrying out a realignment of their respective businesses; and

WHEREAS, one of such agreements to be entered into pursuant to the Master Agreement is to authorize duPont to act as sole clearing agent on and after the opening of business on July 2, 1973 for Walston with respect to Walston's own account and the accounts of the securities' and commodities' customers of Walston, and to provide related services to Walston; and

WHEREAS, duPont desires to act as such sole clearing agent and perform such other services for Walston upon the terms and conditions hereinafter set forth, and Walston desires that duPont so act;

NOW, THEREFORE, in consideration of the premises and mutual covenants of the parties herein contained, it is agreed as follows:

1. *duPont to Act as Sole Clearing Agent.* During the term of this agreement duPont shall act as the sole clearing agent for Walston in respect of all transactions for Walston's own account and the accounts of Walston's present and future securities' and commodities' customers, including customers deemed introduced by Walston as hereinafter provided, (collectively the "Walston Accounts"). Nothing contained

herein shall be deemed to transfer to duPont any subordinated account or secured note collateral account carried by Walston immediately prior to the opening of business on July 2, 1973, or any rights with respect thereto, unless otherwise expressly agreed to in the particular case by Walston and duPont. All accounts for the customers of Walston shall be carried by duPont on a fully disclosed basis. For the purposes of this agreement, the securities' and commodities' customers of duPont and their accounts as in existence immediately prior to the opening of business on July 2, 1973 shall be deemed to be customers and accounts of Walston, and such customers and accounts shall be deemed to have been introduced by Walston to duPont pursuant to this agreement. From and after the date hereof, Walston shall not utilize any other firm or organization, without duPont's prior written consent, for the execution or clearance of any securities, options or commodities transactions for the Walston Accounts; provided, however, that nothing herein shall be deemed to preclude any execution by Walston itself not on a national securities, commodities or options exchange. duPont may enter into clearing agreements with third parties on such terms and conditions as duPont desires, provided that such arrangements do not adversely affect the quality of the services performed by duPont for Walston hereunder or result, at the time any such third party arrangement is begun, in duPont's aggregate indebtedness exceeding 1000% of its net capital, as those terms are defined in the rules of the New York Stock Exchange, Inc. (the "Exchange"), or such other per centum as may from time to time be specified in rule 326(a) of such rules or any successor rule.

2. *Related Services.* In addition to acting as Walston's sole clearing agent, duPont shall perform or provide for the performance of accounting, printing and reproduction, purchasing, personnel, tax preparation, budgeting, proxy mailing and solicitation, dividend collection and disbursement, communications, internal audit, office security, exchange registration and reporting, money management, facilities planning and operations branch liaison services for Walston, and services in connection with the foregoing relating to insurance sales by Walston, the scope of all such services to be as reasonably requested by Walston.

3. *Term of Agreement.* This agreement shall be effective on July 2, 1973 and shall continue for an initial term of ten years ending on

July 2, 1983. At the end of the initial term or any renewal term, this agreement shall automatically be renewed for an additional five-year term unless, at least one year and ten days prior to the end of the initial or any renewal term, either party shall have given written notice to the other to the effect that the party giving such notice elects that this agreement shall not be renewed at the end of such term. Termination of this agreement, however caused, shall not release either duPont or Walston from any liability or responsibility to the other with respect to transactions prior to the effective date of such termination, whether claims relative to such transactions shall have been made before or after such termination. Upon termination of this agreement, duPont will use its best efforts to transfer all the Walston Accounts (other than the Old duPont Accounts, as defined in Section 14) to Walston or Walston's designee, provided that, with respect to customer accounts, the customers assent. duPont shall cooperate with Walston to obtain such assent.

4. *Allocation of Commissions on the Walston Accounts.* Subject to Section 12 hereof, duPont shall receive 100% and, provided that Walston is a member of the exchange on which the transaction is executed or, if the transaction is executed not on an exchange, provided that Walston is a member of the National Association of Securities Dealers, Inc., shall credit Walston with 65% of the commissions charged by duPont on all agency executions by duPont for the Walston Accounts.

5. *duPont's Charges for Principal Transactions or Other Walston Activities.* For each principal transaction effected by Walston, duPont shall be entitled to 35% of the sales credit applicable to the transaction, such sales credit to be given for, but not limited to, principal purchases and sales, tender offer or solicitation fees, management or placement fees, option premium income and insurance premium income earned by Walston. In the event that no sales credit is given for a principal purchase or sale, duPont shall be entitled to an amount equal to 2/5 of 1% of the proceeds of the sale or the purchase price, as the case may be, with respect to equity securities and ¼ of 1% of the proceeds of the sale or the purchase price, as the case may be, with respect to bonds or evidences of indebtedness, but in no event in excess of $2.50 per $1,000 principal amount of such bond or other evidence of indebtedness.

6. *Adjusting Charge.* (a) For each month and for each twelve month period ending on June 30 during the term of this agreement an adjusting charge (the "Adjusting Charge") shall be computed. The Adjusting Charge shall be an amount equal to (i) the duPont Share (as hereinafter defined) of Walston's Consolidated Pre-Tax Profits (as hereinafter defined) for the period, plus (ii) all the duPont expenses for the period (with the exceptions hereinafter noted), less (iii) the sum of (w) duPont's net commission income for the period from agency transactions in the Walston Accounts retained by duPont pursuant to Section 4, (x) the charges under Section 5 hereof for the period, (y) the amount reimbursed to duPont for such period by E. D. Systems Corporation ("EDS") for computer hardware and space at 77 Water Street, New York City, made available to EDS pursuant to the Agreement for Electronic Data Processing Supplies and Services among duPont, Walston Electronic Data Systems Corporation ("EDSC") and EDS, dated July 2, 1973 (the "EDP Agreement"), plus the amount described as rental for certain space at 325 Hudson Street, New York City, utilized by duPont in connection with the Acquisition Settlement Account (as more particularly described in Section 10 hereof), and (z) ten percent (10%) of any Third Party Profit (as hereinafter defined) earned by duPont from Third-Party Clearing Business (as hereinafter defined) during the period.

(b) For the purposes of this agreement:

(i) *Walston's Consolidated Pre-Tax Profits* for any fiscal period shall mean the operating income of Walston and its subsidiaries on a consolidated basis (before giving effect to any extraordinary or non-recurring item), determined in accordance with generally accepted accounting principles consistently applied, before deduction of all income taxes but after giving effect to the Adjusting Charge (which for the purposes of this subparagraph (b)(i) shall be determined without taking into account the duPont Share of Walston's Consolidated Pre-Tax Profits). If the Adjusting Charge as so computed is a negative amount it shall be treated as income to Walston in determining Walston's Consolidated Pre-Tax Profits; if it is a positive amount it shall be treated as an expense of Walston in determining Walston's Consolidated Pre-Tax Profits. For purposes of the foregoing, in the event that Walston becomes a subsidiary of another corporation, whether or not such other corporation is a member of the New York Stock Exchange,

Inc., Walston Consolidated Pre-Tax Profits for any fiscal period shall be deemed to refer to the Consolidated Pre-Tax Profits, calculated as aforesaid, of such other corporation and its consolidated subsidiaries.

(ii) The *duPont Share* of Walston's Consolidated Pre-Tax Profits shall be:

(A) 30% of Walston's Consolidated Pre-Tax Profits until duPont shall have received an amount equal to $4,000,000; and thereafter

(B) 25% of Walston's Consolidated Pre-Tax Profits until duPont shall have received an amount equal to the amount carried on duPont's balance sheet as at June 30, 1973 for capitalized electronic data processing and communications systems development; and thereafter

(C) 15% of Walston's Consolidated Pre-Tax Profits.

duPont will not, without Walston's prior written consent extend or renew the leases on the premises occupied by it at One Wall Street or Two Broadway, New York City, and will use its best efforts to terminate its obligations on such leases as advantageously and expeditiously as practicable.

(iii) The duPont expenses for any period shall exclude (w) any incremental expenses in the categories hereinafter enumerated resulting solely from Third-Party Clearing Business, (x) any expenses relating to the operation by duPont of the Acquisition Settlement Account (as defined in that certain agreement between F. I. duPont, Glore Forgan & Co., PHMFG Corporation and other Parties-In-Interest thereto, dated as of March 17, 1971), (y) any expenses relating to the operation of a subsidiary corporation of duPont other than incorporated foreign sales subsidiaries, and (z) any expenses which duPont and Walston agree are not reasonably related to the clearing or related services provided by duPont. Subject to the foregoing, the duPont expenses include, without limitation:

A. all personnel expenses including, but not limited to, payroll, overtime, vacation pay, bonuses, fringe benefit programs, profit-sharing and pension plan contributions, agency

fees and travel and entertainment expenses incurred by duPont, other than any such expenses pertaining to those employees of duPont primarily engaged in the operation of the Acquisition Settlement Account;

B. all charges payable by duPont for electronic data processing services, supplies and equipment and related communications lines, terminals, wires and other equipment and special services, electronic adding machines, and microfilm and microfiche and related services and equipment, whether or not furnished duPont under agreements with EDS (exclusive of any credit received by duPont from EDS on account of matters arising from the contract between Electronic Data Systems Corporation and duPont which was amended as of July 2, 1973);

C. all expenses incurred for borrowed money or property, including, without limitation, all of duPont's expenses to obtain, carry or discharge capital, such as all interest, commitment fees and premiums payable by duPont, and any such expenses payable by PHM & Co. or any affiliate of PHM & Co. as defined in the Master Agreement) in connection with supplying equity or subordinated capital to duPont to the extent not reimbursed to it by duPont;

D. all premiums payable by duPont on insurance policies and bonds;

E. any assessment payable by duPont pursuant to the Securities Investors Protection Act of 1970 or successor legislation, or pursuant to any rule, regulation or requirement of any exchange or clearing association or otherwise;

F. all exchange, membership and clearing house fees, dues and charges, including but not limited to fees for transfers of memberships to or from duPont;

G. all taxes payable by duPont other than federal, state and city income taxes;

H. all general and administrative expenses;

I. all depreciation and amortization of capital expenditures;

J. all costs not covered by insurance for forged, counterfeited, lost, altered or stolen securities not expressly assumed by duPont hereunder;

K. all audit and legal fees, excluding any such fees attributable to transactions occurring prior to July 2, 1973; and

L. all expenses incurred by duPont for brokerage, including but not limited to floor or "two dollar" brokerage and any other expenses relating to the execution of orders for the purchase or sale of securities, commodities or options.

(iv) *Third-Party Clearing Business* shall mean clearing business done and clearing services performed by duPont for any securities brokerage firm other than Walston.

(v) *Third-Party Profit* shall mean the profit derived from Third-Party Clearing Business of duPont determined by deducting from the sum of the commissions retained from or fees paid by such third-party, all expenses incurred by duPont in performing such business not reimbursed to it by Walston.

7. *Interest.* duPont shall credit Walston with 100% of the interest charged by duPont on the Walston Accounts.

8. *Advance Payments.* As an advance payment in respect of the charges due duPont for the services to be rendered to Walston hereunder and as security for the obligations of Walston hereunder, Walston shall pay to duPont, on or before the effective date of this agreement, the sum of $3,000,000 (the "Advance Payment"). duPont shall not be required to segregate said sum and may use the funds in the course of its business. The Advance Payment shall be returnable to Walston upon the termination of this agreement; provided, however, that Walston shall be entitled to credit the amount thereof against payments due under this agreement to duPont in respect of the last month under this agreement as it may from time to time be extended or renewed. Walston irrevocably agrees that its rights with respect to the return or credit of the Advance Payment shall be subordinate to the same extent as its rights to receive payment of the account referred to in Section 9(a), all as provided in the second through fifth paragraphs of said Section 9(a); provided, however, that in the event of any

receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 ("SIPA") or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization (whether or not pursuant to bankruptcy laws) or any other marshalling of assets and liabilities (any such event being herein referred to as a "reorganization") of Walston at any time prior to any reorganization of duPont, or any reorganization of Walston within 90 days after any reorganization of duPont, Walston shall have no right to the return of the Advance Payment and shall have no claim against duPont in respect thereof.

9. *Settlements.* (a) The commissions due Walston pursuant to Section 4 shall be paid or otherwise credited to Walston by duPont weekly; provided, however, that of the amount so payable or otherwise creditable to Walston, duPont shall be entitled to retain an amount sufficient to enable duPont to pay such current and currently foreseeable costs, expenses, liabilities, judgments and claims as are not reimbursable to duPont by Walston pursuant to this agreement. The amount that duPont may so withhold shall be that percentage of the amount from time to time due Walston under Section 4 as may be mutually agreed between the parties but in no event more than 30% nor less than 15% thereof. All such retained amounts shall be set up on duPont's books as a separate account payable to Walston and upon being credited to such account shall be deemed to have been credited to Walston pursuant to Section 4. Except as set forth in the last paragraph of this Section 9(a), payment of such account payable shall be made only (i) by setting off against such account payable the lesser of (x) any amount due duPont from Walston as an Adjusting Charge, or (y) 15% of the amount of Walston's Consolidated Pre-Tax Profits used in the computation of such Adjusting Charge but in no event more than the amount then payable to duPont pursuant to Section 9(d) on account of the duPont Share of Walston's Consolidated Pre-Tax Profits, or (ii) to the extent that duPont at the time has net capital in excess of that amount of net capital necessary to maintain a ratio of aggregate indebtedness to net capital of 8:1 (under the capital rules of the Exchange) and duPont has received the prior written consent of the Exchange.

Notwithstanding the foregoing, duPont's obligation to pay such account, in whole or in part, shall be suspended for any period of time during which after giving effect to such payment (together with

(a) the payment of any other obligation of duPont payable at or prior to such payment and (b) the return of any Secured Demand Note and the collateral therefor held by duPont and returnable at or prior to such payment) (i) the aggregate indebtedness of duPont would exceed 1200 per centum of its net capital as those terms are defined in the rules of the Exchange in effect at the time payment is to be made or such lesser per centum as may be made applicable to duPont from time to time by the Exchange or a governmental agency or body having appropriate authority or (ii) its net capital, as defined in the rules of the Exchange, is less than the minimum dollar amount required by such rules in effect at such time or such greater dollar amount as may be made applicable to duPont by a governmental agency or body having appropriate authority (the net capital necessary to enable duPont to comply with such 1200 or lesser per centum and such minimum dollar amount or such greater dollar amount is hereinafter referred to as the "Applicable Minimum Capital"). The first day at which under this Section 9(a) duPont has an obligation to make any payment on such account is hereinafter referred to as a maturity date with respect to such payment.

Walston irrevocably agrees that the obligations of duPont with respect to any payment of such account shall be subordinate in right of payment and subject to the prior payment or provision for payment in full of all claims of all other present and future creditors of duPont, whose claims are not similarly subordinated (claims hereunder shall rank *pari passu* with claims similarly subordinated) and to claims which are now or hereafter expressly stated in the instruments creating such claims to be senior in right of payment to the claims of the class of this claim, arising out of any matter occurring prior to the maturity date of such payment. In the event of the appointment of a receiver or trustee of duPont or in the event of its insolvency, liquidation pursuant to SIPA or otherwise, its bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of duPont, Walston shall not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of duPont until all claims of all other present and future creditors of duPont, whose claims are senior hereto, have been fully satisfied, or provision has been made therefor.

If payment is made of all or any part of such account and if immediately after any such payment duPont's net capital is less than the Applicable Minimum Capital, Walston agrees irrevocably (whether or not it had any knowledge or notice of such fact at the time of any such payment) to repay to duPont, its successors or assigns, the sum so paid, to be held by duPont pursuant to the provisions hereof as if such payment had never been made; provided, however, that any suit for the recovery of any such payment must be commenced within two years of the date of such payment.

The account shall forthwith mature and become due and payable in the event of any receivership, insolvency, liquidation pursuant to SIPA or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of duPont; but payment of the same shall remain subordinate as hereinabove set forth.

(b) The charges due duPont pursuant to Section 5 shall be paid or otherwise credited to duPont by Walston weekly.

(c) The interest due Walston pursuant to Section 7 shall be paid or otherwise credited by duPont to Walston monthly.

(d) The monthly Adjusting Charge shall be computed on or before the last business day of the next succeeding month. If the Adjusting Charge is a positive amount, Walston shall immediately pay or otherwise credit such amount to duPont, including a credit against the account payable under Section 9(a) to the extent permitted therein. If the Adjusting Charge is a negative amount, duPont shall immediately pay or otherwise credit such amount to Walston. In connection with the monthly computation of the Adjusting Charge, (i) a computation of Walston's Consolidated Pre-Tax Profits for such month shall be prepared by Walston's Chief Financial Officer and delivered to duPont at least two business days prior to the last business day of the next succeeding month, and (ii) the duPont Share for such month of the Walston Consolidated Pre-Tax Profits shall be based on the Walston Consolidated Pre-Tax Profits for the period from the preceding July 1 to the end of such month and shall give effect to any amount during such period previously credited to duPont in respect of the monthly duPont Share.

Promptly following June 30 of each year a calculation of the Adjusting Charge for the twelve months ending on such June 30 shall be made. If the annual Adjusting Charge exceeds the aggregate of the monthly Adjusting Charges for such twelve month period, Walston shall immediately pay to or otherwise credit duPont with the excess, including a credit against the account payable under Section 9(a) to the extent permitted therein. If the annual Adjusting Charge is less than the aggregate of the monthly Adjusting Charges for such twelve month period, duPont shall immediately pay to or otherwise credit Walston with the deficit.

In connection with the computation of the annual Adjusting Charge, the duPont Share of Walston's Consolidated Pre-Tax Profits shall be recomputed based upon Walston's Consolidated Pre-Tax Profits for the twelve month period ending June 30.

In connection with the computations provided for herein of the Adjusting Charge, duPont and Walston shall each provide the other with such supporting documentation as each may reasonably request in connection with its evaluation of any such computation, and audited financial statements promptly following their becoming available.

10. *Space.* Walston shall make available to duPont, without cost, for use by duPont in connection with the services to be performed by duPont hereunder or by EDS pursuant to the EDP Agreement the space located at 77 Water Street, 25 Broadway, 42 Broadway, 129 Front Street and 325 Hudson Street, New York City, other than the space at 325 Hudson Street utilized by duPont in connection with the Acquisition Settlement Account (the "ASA Space"), all as more particularly described in Schedule 1 attached hereto, or other comparable space acceptable to duPont. Walston shall make available to duPont the ASA Space at a rental equal to the rent payable by Walston for the entire space at 325 Hudson Street multiplied by a fraction the numerator of which is the square foot area of the ASA Space and the denominator of which is the square foot area of the entire space. Payment by duPont of such rental is provided for in the calculation of the Adjusting Charge. In connection with making available to duPont all such space, Walston agrees to maintain appropriate insurance, keep the premises in good order and repair, and cause to be provided all such janitorial and other similar maintenance services and utilities as may

be reasonably required for duPont to render services hereunder, to fulfill its contractual obligations to EDS and to conduct its activities with respect to the Acquisition Settlement Account all without cost or liability to duPont, it being agreed that the amount otherwise fairly chargeable to duPont by Walston has been subsumed within the other charges and adjustments provided herein.

11. *Equipment.* Walston shall make available to duPont or will cause its subsidiaries to make available to duPont, without cost, all the data processing and communications equipment listed on Schedule 2 hereto in order that duPont may make all such equipment available to EDS pursuant to the EDP Agreement.

12. *Minimum Fees.* Notwithstanding any other provisions herein to the contrary, duPont shall be entitled to retain, with respect to each securities or commodities transaction, the applicable minimum member clearance commission prescribed by the applicable exchange or membership association of which duPont and Walston are members.

13. *Checks.* (a) Checks to customers in respect of the Walston Accounts may be drawn by Walston on behalf of and as authorized in the particular case by duPont. duPont shall reimburse Walston daily for such checks if drawn on a Walston bank acount.

(b) Checks received by Walston from customers in respect of the Walston Accounts shall be deposited, on the date received, and credited to duPont.

14. *Notation on Statements.* duPont shall carry all accounts of Walston's customers in the name of each respective customer and shall maintain a capability to determine from its books that the account was introduced by Walston. All statements, bills and other notices of transactions in such accounts shall indicate that the account was cleared by duPont. duPont will furnish Walston with duplicate copies of all confirmations, statements and margin calls and will furnish Walston with such correspondence between duPont and Walston's customers as Walston reasonably requests. duPont shall maintain a capability to determine from its books which of the Walston Accounts were, as of the close of business on June 29, 1973, customers or accounts of duPont (the "Old duPont Accounts") or of Walston, respectively. Inadvertent omissions shall not be deemed to be a breach of this Section 14.

15. *Opening of Accounts.* (a) At or as promptly as practicable after the date hereof, Walston shall furnish duPont with all financial and personal information in its possession with respect to each customer and account of Walston as of the close of business on June 29, 1973, such other information as duPont may reasonably require and, with respect to each margin account on Walston's books as of the close of business on June 29, 1973, with executed customers' agreements and consents to loan of securities (collectively "margin agreements") on Walston's forms, duly assigned by Walston to duPont. In addition, Walston shall as promptly as practicable deliver executed margin agreements on duPont's forms with respect to these margin accounts.

(b) At the opening of each new account hereafter, Walston shall furnish duPont with all financial and personal information in its possession with respect to such account and such other information as duPont may reasonably require. For all Walston Accounts opened hereafter that are margin accounts, Walston shall furnish duPont with executed margin agreements on duPont forms, which duPont shall supply. Upon duPont's request, Walston shall furnish duPont with any other documents and agreements executed by customers of Walston on duPont's forms (which duPont shall supply) and which may be required by duPont in connection with duPont's opening, operating or maintaining the accounts of Walston's customers.

(c) duPont shall have the right to require that all transactions in any customer account be treated as cash transactions until such time as Walston shall have furnished to duPont, duPont's forms of margin agreement duly executed by the customer.

(d) If any account may have been or shall hereafter be opened without duPont having previously received the information described in this Section 15 or, in the case of a margin account without duPont having previously received a properly executed margin agreement on duPont's forms, duPont's failure to receive the same shall not be deemed a waiver of duPont's requirements.

(e) duPont reserves the right to reject any account or order which Walston may tender to duPont and also the right to terminate any account previously accepted by duPont.

(f) Walston warrants to and covenants with duPont that all customers of Walston (other than those who are the owners of Old

duPont Accounts) shall not be minors or such persons as come within the prohibitions of any law, governmental regulation or rule of any exchange or other self-regulatory body (including present Rule 407 of the New York Stock Exchange, Inc.), that Walston's customers (other than those who are the owners of Old duPont Accounts) shall be the owners of accounts opened by duPont in their names, that any orders and instructions given by Walston or any of its employees shall have been, prior to the giving thereof, fully and properly authorized and that the execution of such orders shall not be in violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the rules and regulations thereunder, or any other applicable law, rule or regulation.

(g) The rules of the New York Stock Exchange, Inc. and other regulatory bodies provide that duPont must have proper documentation to support any account opened on duPont's books. If after reasonable requests the necessary documents are not received, duPont will give Walston notification that no further orders will be accepted for the account involved. Should it happen that inadvertent orders are placed for such accounts after this notice is received, no commission credit will be granted to Walston from such orders. On receipt of the necessary documentation, this restriction will be lifted on future commissions but any commissions withheld will not be returned or credited to Walston.

(h) Walston and duPont shall mutually agree on the terms and contents of any revision of any duPont form or of any new duPont form to be used by Walston or duPont hereunder.

16. *Transactions and Margin.* (a) Walston shall be responsible to duPont on margin accounts for collection of the margin (Federal margin under Regulation T) required to support each transaction in the account, except that Walston shall not be so responsible with respect to transactions commenced prior to July 2, 1973 in the old duPont Accounts. After required margin on each transaction has been received by duPont, maintenance margin calls are to be made by duPont. Walston agrees to cooperate with duPont in obtaining margin on maintenance calls; provided, however, that duPont shall have the right to modify the margin requirements of any account or accounts, specifically or generally, from time to time by requiring additional margin. duPont

is to be the sole judge as to the manner in which accounts are to be handled by duPont for margin purposes. Walston shall bear all risk of loss with respect to debit balances in any of the Walston Accounts, except to the extent that duPont is responsible for the Old duPont Accounts under Section 18(c) hereof, or has willfully or recklessly failed to make a timely margin call.

(b) On all transactions in the Walston Accounts, other than in margin accounts, Walston shall be responsible for purchases for Walston's customers until actual and complete payment therefor has been received by duPont, except for transactions commenced prior to July 2, 1973 in the Old duPont Accounts. Checks received by duPont shall be promptly deposited by duPont and shall not constitute payment until paid and the proceeds actually credit to duPont by its bank. Walston shall be responsible for sales (except actual short-sales which shall be classified as sales in margin accounts) until delivery acceptable to duPont of the securities. In case of a purchase or sale of securities "when issued", or where distribution or delivery is otherwise delayed, in an account other than a margin account, Walston shall be responsible for the transaction until necessary and satisfactory margin has been received by duPont, and for checks representing such margin until they shall have been paid and the proceeds received and credited to duPont by its bank. duPont shall not be required to endorse any "put", "call" or other option for any Walston customer unless the then condition of the Walston Account is satisfactory to duPont, and in any event Walston shall be responsible for any loss or liability incurred by duPont on account of any such endorsement (other than endorsements made by duPont prior to the opening of business on July 2, 1973).

(c) With respect to over-the-counter orders, Walston assumes the *del credere* risk of the counter party and will reimburse duPont for any loss or liability it sustains.

(d) This agreement and all transactions are subject to the constitution, rules, by-laws, regulations and customs and any modifications thereof of the market or the exchange and its clearing house, if any, were executed, to the Securities Exchange Act of 1934 and to all Federal and state laws or regulations applicable thereto.

(e) Commencing with the opening of business on July 2, 1973, with respect to the Walston Accounts, Walston assumes full responsibility

for compliance with regulatory procedures and rules prescribed by any securities exchange, association and Federal, state or local government agencies to whose jurisdiction the transaction is subject and to any State or local statute or the common law in the same manner and to the same degree as if Walston were carrying its own accounts.

(f) Without in any way limiting the generality of the provisions of paragraph (d) hereof, the parties agree that:

(i) all transactions submitted to the National Clearing Corporation ("NCC") in accordance with this agreement shall be governed by the Rules and By-Laws of the NCC, and further, the parties agree that no provision of this agreement is in conflict with or shall be interpreted as requiring violation by either party of any Rule or By-Law of the NCC;

(ii) duPont, so far as the rights of the NCC and all other clearing members of the NCC are concerned, shall be liable for those transactions of Walston as though such transactions were by duPont itself;

(iii) Walston is not entitled by the terms of this agreement whether stated or implied to any rights or benefits of a clearing member of the NCC other than the right to have duPont act on its behalf;

(iv) duPont shall reconcile daily its positions resulting from the reporting, clearing and settling of its transactions through the NCC;

(v) the books and records of Walston shall be open at all times to reasonable inspection by a duly authorized representative of the NCC;

(vi) this paragraph 16(f) may not be modified, amended, altered, cancelled, revoked or terminated without prior written approval of the NCC; and

(vii) the NCC shall have the right to publish on appropriate membership lists the names of all non-clearing members and their appropriate corresponding clearing members.

17. *Supervisory Responsibility.* duPont shall maintain a compliance staff which will report to Walston with respect to compliance matters which come to its attention as a result of its examination and

surveillance of data concerning transactions in the Walston Accounts. As between the parties Walston has exclusive responsibility for all compliance matters including without limitation supervisory responsibility in connection with matters involving the investment objectives of Walston's customers, the suitability of the investments they make, and the frequency of trading in their accounts and for supervising the activities and training of its registered representatives as well as all of its other employees. duPont agrees to furnish to Walston such reports and data as Walston reasonably requests in order to assist Walston in discharging its supervisory responsibility.

18. *Allocation of Responsibility for Pre-July 2, 1973 Transactions.* (a) Walston expressly indemnifies duPont against and agrees to hold duPont harmless from (i) all losses incurred by duPont on margin accounts that would under then applicable margin maintenance rules, liquidate on the books of Walston to a deficit immediately prior to the opening of business on July 2, 1973, and (ii) all unsecured and partially secured receivables due Walston immediately prior to the opening of business on July 2, 1973 in respect of the Walston Accounts.

(b) Walston expressly indemnifies duPont against and agrees to hold duPont harmless from all liabilities and losses of every kind and nature and any related expenses thereto including reasonable legal fees incurred by duPont for matters arising prior to the date hereof in respect of accounts on the books of Walston immediately prior to the opening of business on July 2, 1973 or on account of any other matter, transaction or occurrence prior to the date hereof for which duPont would not be liable but for the acquisition by it of the Walston Accounts (other than the Old duPont Accounts) and the other assets and properties of Walston necessary for duPont to provide the clearing and related services hereunder.

(c) duPont shall be responsible for all losses incurred on margin accounts that would, under then applicable margin maintenance rules, liquidate on the books of duPont to a deficit immediately prior to the opening of business on July 2, 1973, and (ii) all unsecured and partially secured receivables due duPont immediately prior to the opening of business on July 2, 1973 in respect of the Old duPont Accounts.

(d) duPont expressly indemnifies Walston against and agrees to hold Walston harmless from all liabilities and losses of every kind and

nature and any related expenses thereto including reasonable legal fees incurred by Walston for matters arising prior to the date hereof in respect of accounts on the books of duPont immediately prior to the opening of business on July 2, 1973 or on account of any other matter, transaction or occurrence prior to the date hereof for which Walston would not be liable but for the transfer by it to duPont of the accounts on the books of Walston immediately prior to the opening of business on July 2, 1973 and the other assets and properties of Walston necessary for duPont to provide the clearing and related services hereunder.

19. *Errors, Losses, Controversies, etc.* (a) With respect to the Walston Accounts, errors, misunderstandings, controversies, expenses, losses and liabilities occurring or incurred on or after the date hereof, except those specifically otherwise covered in this agreement, which shall arise otherwise than due to the willful misconduct or reckless behavior of duPont's employees, shall be, as between the parties, Walston's responsibility and liability. In the event, however, that by reason of such error, misunderstanding, controversy, expense, loss or liability, duPont in its discretion deems it advisable to commence an action or proceeding against any of Walston's customers, duPont may do so, or at its election, upon its request, Walston shall institute such action or proceeding, and in either of such events Walston agrees to indemnify duPont against all loss, liability, damage or expense (including reasonable attorneys' fees) in connection therewith. If such error, misunderstanding, controversy, expense, loss or liability shall result in the bringing of an action or proceeding against duPont, Walston shall indemnify and hold duPont harmless from any loss, liability, damage or expense (including reasonable attorneys' fees) which duPont may incur or sustain in connection therewith or under any settlement thereof.

(b) With respect to the Walston Accounts, errors, misunderstandings, controversies, expenses, losses and liabilities occurring or incurred on or after the date hereof, except those specifically otherwise covered in this agreement, which shall arise out of the willful misconduct or reckless behavior of duPont's employees shall, as between the parties, be duPont's responsibility and liability. In the event, however, that by reason of such error, misunderstanding, controversy, expense, loss or liability, Walston in its discretion deems it advisable to commence an action or proceeding against any of its customers, it may

do so, or at its election, upon its request, duPont shall institute such action or proceeding, and in either case duPont agrees to indemnify Walston against all loss, liability, damage or expense (including reasonable attorneys' fees) in connection therewith. If such error, misunderstanding, controversy, expense, loss or liability shall result in the bringing of an action or proceeding against Walston, duPont shall indemnify and hold Walston harmless from any loss, liability, damage or expense (including reasonable attorneys' fees) which Walston may incur or sustain in connection therewith or under any settlement thereof.

(c) Without limiting the generality of the foregoing provisions, Walston assumes complete responsibility for, and hereby agrees to indemnify and hold duPont harmless from, against and with respect to any and all loss, liability, and damage to duPont on account of Walston's not providing duPont with executed margin agreements on duPont's forms pursuant to Section 15(a) hereof.

(d) In addition to all other rights that duPont has under law or this agreement, it shall be entitled to withhold from any sums due from duPont to Walston hereunder or held by duPont for Walston, and to pay to itself out of such sums any amount for which it is indemnified under this agreement, including without limitation under Sections 18 and 19 hereof and for the amount of any loss, liability, damage or expense (including reasonable attorneys' fees) arising out of or resulting from any failure by Walston or any of its employees fully to carry out the duties and responsibilities assigned to Walston under this agreement.

20. *Limitation on Margin Debits in the Walston Accounts.* Walston agrees that without duPont's prior written consent, the aggregate margin debits in the Walston Accounts from the date hereof to September 30, 1973 shall not exceed $420 million and from and after October 1, 1973 shall not exceed $380 million. duPont shall give its consent to an increase in the aggregate margin debits in the Walston Accounts in excess of the foregoing limits if Walston shall, from time to time as necessary, and upon such terms and conditions as duPont, in good faith reasonably deems appropriate, supply to duPont and maintain with duPont additional subordinated debt or equity capital in order that duPont can meet and maintain a net capital ratio under Rule 326(a) of the New York Stock Exchange, Inc. (or any other rule which may then be applicable to duPont) of less than 9.9:1 or such lesser ratio

as may then be required in order to conduct its business without restrictions on the expansion thereof. duPont shall have the right from time to time to require Walston to take or cause to be taken such action as may be necessary to reduce the aggregate margin debits in the Walston Accounts if duPont shall then be contractuallly committed to reduce or contract its business by the terms of any evidence or agreement respecting indebtedness of which it is the obligor, or if a failure so to reduce or contract its business could result in the acceleration of the maturity of such indebtedness.

21. *Effectiveness.* It shall be a condition to the effectiveness of this agreement that the existing agreements for electronic data processing supplies and services between EDS and Walston and Electronic Data Systems Corporation and duPont shall have been amended and the EDP Agreement executed and delivered.

22. *Miscellaneous.* (a) This agreement shall be construed in accordance with and governed by the laws of the State of New York and may be modified only by writing signed by both parties to this agreement. A modification shall not be deemed a cancellation of this agreement. No waiver of any provision hereof shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced.

(b) This agreement shall be binding on all successors or assigns of both parties hereto, irrespective of change of firm personnel or name. All representations and warranties contained herein shall survive the execution and delivery of this agreement.

In Witness Whereof, the parties have executed and delivered this agreement as of the day and year first above written.

Walston & Co., Inc.

Attest: George C. Cabell

By G. T. Thomson

duPont Glore Forgan
Incorporated

Attest: G. Michael Boswell

By Morton Myerson

SCHEDULE 1

REAL ESTATE DESCRIPTIONS

1. 77 Water Street:

2nd Floor	—	10% of useable space
3rd Floor	—	100% of useable space
4th Floor	—	100% of useable space
5th Floor	—	73% of useable space
6th Floor	—	56% of useable space
8th Floor	—	88% of useable space
9th Floor	—	100% of useable space
10th Floor	—	22% of useable space
11th Floor	—	100% of useable space
12th Floor	—	82% of useable space

2. 25 Broadway:

Description as stated on lease dated November 29, 1968 between Cunard Steam-Ship Co. and Wall Street Leasing Corporation.

> "Part of the Ground Floor (Greenwich Street level), the Cunard Building, 25 Broadway, New York, New York."

Approximately 16,136 square feet.

3. 42 Broadway:

Description as stated on sublease dated March 1, 1971 between Smith, Barney & Co., Inc. and F. I. duPont, Glore Forgan and Company.

> "... the entire 9th floor in the building known by street number as 42 Broadway, New York, New York."

Approximately 16,000 square feet.

4. 325 Hudson Street:

3rd Floor	—	100% of useable space
5th Floor	—	100% of useable space
6th Floor	—	100% of useable space
7th Floor	—	100% of useable space
8th Floor	—	100% of useable space

5. 129 Front Street:

2nd Floor	—	100% of useable space
3rd Floor	—	100% of useable space
4th Floor	—	100% of useable space
5th Floor	—	100% of useable space

6. 2525 Tilden Avenue:

3rd Floor	—	100% of useable space
4th Floor	—	100% of useable space
5th Floor	—	100% of useable space
6th Floor	—	100% of useable space

23

SCHEDULE 2

Description/Model	Serial Number	Monthly Depreciation	Date Fully Depreciated
Tape Control	16173	$ 577.90	3/76
Tape Control	18586	577.90	3/76
Tape Drive	31959	407.11	3/76
Tape Drive	32099	407.11	3/76
Tape Drive	31939	407.11	3/76
Tape Switching Unit	11434	475.06	3/76
Reader/Punch	11855	331.70	7/76
Reader/Punch	12688	331.27	7/76
Printer	31620	397.60	7/76
Printer	32270	397.60	7/76
Printer	32269	397.60	7/76
Control Unit (Printer/Reader)	50319	735.06	7/76
Print Train	14975	25.60	7/76
Print Train	15101	25.60	7/76
Print Train	14262	25.60	7/76
2314	11229	2,737.55	7/76
2314	11230	2,737.55	7/76
TOTAL MONTHLY DEPRECIATION		$10,994.92	

[CONFORMED COPY]

EXHIBIT 2
to
Master Agreement

TRANSFER AGREEMENT

MEMORANDUM OF AGREEMENT dated as of the 2nd day of July, 1973, in Jersey City, New Jersey, by and between WALSTON & Co., INC., a corporation organized under the laws of the State of Delaware ("Walston"), and DUPONT GLORE FORGAN INCORPORATED, a corporation organized under the laws of the State of Delaware ("duPont").

WITNESSETH:

WHEREAS, Walston and duPont are parties to an agreement dated as of July 2, 1973 (the "Master Agreement") pursuant to which Walston and duPont are to enter into certain agreements for the purpose of carrying out a realignment of their respective businesses; and

WHEREAS, one of such agreements to be entered into pursuant to the Master Agreement is to bring about the transfer from duPont to Walston of certain of the assets, properties and business of duPont and the assumption by Walston of certain of but not all of the liabilities and obligations of duPont with respect thereto, and the transfer from Walston to duPont of certain assets and properties of Walston and the assumption by duPont of certain of but not all of the liabilities and obligations of Walston with respect thereto;

NOW, THEREFORE, in consideration of the premises and the respective representations, transfers and mutual covenants of the parties herein, it was agreed as follows:

ARTICLE I

DEFINITIONS

The following terms have the following meanings unless otherwise specifically provided:

1.1 *Clearing Agreement.* The Clearing and Related Services Agreement dated as of July 2, 1973 between duPont and Walston.

1.2 *Closing* and *Closing Date.* As defined in Article II of this Agreement.

1.3 *NYSE.* New York Stock Exchange, Inc.

1.4 *Retained Assets.* As defined in Section 3.2 of this Agreement.

1.5 *Retained Offices.* As defined in Section 3.2(f) of this Agreement.

1.6 *Subsidiary Corporations.* Any corporation of which eighty percent (80%) or more of the outstanding voting capital stock is owned, directly or indirectly, by duPont or Walston, as the case may be, or by a Subsidiary Corporation of duPont or Walston, as the case may be.

1.7 *Transferred Assets.* As defined in Section 3.1 of this Agreement.

1.8 *Transferred Offices.* As defined in Section 3.1(b) of this Agreement.

1.9 *Transferred Securities.* As defined in Section 3.1(a) of this Agreement.

ARTICLE II

Closing

2.1 *Closing and Closing Date.* The execution and delivery of this Memorandum of Agreement and the closing of the transactions hereunder (the "Closing") took place at the offices of First Jersey National Bank & Trust Company in Jersey City, New Jersey, at 9:00 A.M., local time, on Monday, July 2, 1973 (the date of the Closing being hereinafter called the "Closing Date"). All action taken at the Closing was deemed to have been taken, and to have become effective, as of the opening of business on July 2, 1973.

ARTICLE III

Transfer of Certain Assets

3.1 *Assets Transferred.* In reliance upon the respective representations and warranties of the parties contained herein and in the Master Agreement and upon the terms and subject to the conditions hereinafter set forth, on the Closing Date, duPont sold, conveyed, assigned, transferred, delivered and set over to Walston, and Walston purchased, received and accepted, all of duPont's right, title and interest in and to the following assets, properties and business of

duPont, wherever located, as the same existed as of the opening of business on July 2, 1973 (the "Transferred Assets"):

(a) all of duPont's right, title and interest in and to the long or short positions in the securities listed on schedule 3.1(a) delivered to Walston at the Closing (the "Transferred Securities");

(b) all of duPont's right and interest in leases of real property and improvements thereon, including security deposits applicable thereto, relating to those offices of duPont which were listed on schedule 3.1(b) delivered to Walston at the Closing (the "Transferred Offices");

(c) all of duPont's rights as employer of its employees, whether compensated on a salary or commission basis, other than with respect to those employees who remain in the employ of duPont;

(d) all of duPont's right, title and interest, as owner, lessee or user, in and to equipment, machinery, furniture, fixtures, leasehold improvements, and any security deposits applicable thereto, located at the Transferred Offices or otherwise used in the ordinary course of duPont's sales business, except for such equipment, machinery, furniture, fixtures, leasehold improvements, and any security deposits applicable thereto, as are reasonably (i) necessary for the performance by duPont of the services to be provided by it pursuant to the Clearing Agreement or (ii) related to the Retained Assets;

(e) the non-exclusive right to the use in common with duPont of the name "duPont" in the business to be conducted by Walston, on such terms and conditions as duPont and Walston shall mutually agree, such non-exclusive right to terminate immediately upon the termination, for any reason, of the Clearing Agreement;

(f) all of duPont's right, title and interest in and to office supplies, packaging and shipping materials and other supplies and supply inventories, prepaid real property taxes, other prepaid items and deposits, contracts, choses in action, claims and rights of recovery or set-off, all of every kind and character, and the right to receive mail and other communications and shipments to duPont,

all with respect to the Transferred Offices, except as are reasonably (i) necessary for the performance by duPont of the services to be provided by it pursuant to the Clearing Agreement or (ii) related to the Retained Assets;

(g) all books and records relating to the Transferred Offices except as are reasonably (i) necessary for the performance by duPont of the services to be provided by it pursuant to the Clearing Agreement or (ii) related to the Retained Assets;

(h) all of duPont's right, title and interest in and to its other assets, properties or business pertaining to the sales and investment banking business of duPont and related support services, including, but not limited to, the records, work in progress, memoranda and reports of duPont's research department, its sales and training materials, courses, reports and studies, and all of its right, title, interest and copyright in the "duPont triangle" sales and marketing concept drawings and other documents; and

(i) all of duPont's proprietary accounts in respect of the foregoing, e.g., without limitation, all of its rights to employee advances to sales personnel, proprietary fails to deliver and proprietary stock borrowed accounts and the related proprietary stock positions.

3.2 *Assets Retained.* The assets, properties and business of duPont not transferred to Walston pursuant to this Agreement (the "Retained Assets") were:

(a) all of duPont's right and interest with respect to the accounts of customers maintained on duPont's books pursuant to the Clearing Agreement, including all securities and rights thereto (including rights to securities traded on a when issued basis), commodities futures contracts and commodities, and money balances (including margin or deposit balances) owned or held by duPont, or owing to duPont, for such customers;

(b) all memberships owned by duPont or employed in duPont's business in all securities exchanges, commodities exchanges, clearing associations and similar membership organizations of brokers or dealers;

(c) all securities owned by duPont as listed on schedule 3.2(c) delivered to Walston at the Closing;

(d) all cash, cash items and balances;

(e) all rights accruing to duPont under the Master Agreement, the Clearing Agreement and any other agreements entered into by duPont pursuant to the Master Agreement;

(f) all of duPont's right and interest in the leases of real property and improvements thereon, including security deposits applicable thereto, at One Wall Street and Two Broadway in New York City, New York (the "Retained Offices"), and all equipment, machinery, service leases, including security deposits applicable thereto, furniture, fixtures, leasehold improvements, books, records, office supplies, packaging and shipping materials and other supplies and supply inventories, insurance policies, prepaid real property taxes, other prepaid items and receivables (including a credit due from Electronic Data Systems Corporation) relating to the Retained Assets or the performance of the services to be provided by duPont pursuant to the Clearing Agreement;

(g) all of duPont's right, title and interest in and to assets and properties pertaining to the operation and management of the Acquisition Settlement Account as defined in Schedule 1 to the Agreement dated as of March 17, 1971, as amended, between F. I. duPont, Glore Forgan & Co., PHMFG Corporation and others;

(h) all of the shares of capital stock of all Subsidiary Corporations owned by duPont as listed on schedule 3.2(h) delivered to Walston at the Closing;

(i) all of duPont's right, title and interest in and to such other assets, properties and business as are not necessary to transfer effectively to Walston the Transferred Assets and to effectuate the provisions of the Master Agreement, the Clearing Agreement and any other agreement incident thereto, including, but not limited to, notes receivable, choses in action, accounts receivable, refunds, claims and judgments and accrued interest receivable;

(j) the right to receive the management fee (including consulting fees or other special compensation) earned or to be earned

by the managing underwriter in connection with the duPont financings listed on schedule 3.2(j) delivered to Walston at the Closing; and

(k) all of duPont's right and interest in securities, letters of credit and other property contributed or made available to duPont for the purpose of increasing duPont's capital under the NYSE capital rules.

3.3 *Transfer of Certain Walston Accounts.* In reliance upon the respective representations and warranties of the parties herein and in the Master Agreement and upon the terms and subject to the conditions hereinafter set forth, on the Closing Date, Walston sold, conveyed, assigned, transferred, delivered and set over to duPont, and duPont purchased, received and accepted from Walston, all of Walston's right, title and interest in and to all accounts and related securities positions on Walston's books at the opening of business on July 2, 1973 arising from the pledge, loan, borrowing, hypothecation, delivery or failure to make delivery of customer securities, and all other accounts, including all cash balances and securities positions relating to the purchase, sale, transfer and recording of customer transactions.

3.4 *Exchange Memberships.* In reliance upon the respective representations and warranties of the parties herein and in the Master Agreement, on the Closing Date Walston sold, conveyed, assigned, transferred, delivered and set over to duPont and duPont purchased, received and accepted all of Walston's right, title and interest in the memberships owned by Walston or employed in Walston's business in securities exchanges, commodities exchanges, clearing associations and similar membership organizations of brokers or dealers (the "Exchange Memberships") as are listed in schedule 3.4 delivered by Walston at the Closing. Walston further agreed at any time and from time to time after the Closing, promptly following a written request or requests from duPont, to sell, convey, assign, transfer and deliver to duPont, the use of, and all of Walston's right, title and interest in, any other similar memberships as are specified in such written request or requests. duPont agreed to purchase the Exchange Memberships and any subsequently requested memberships at a price equal to the last sale price for such membership prior to the Closing

Date or the date of duPont's written request, as the case may be, as certified by the Secretary or any other responsible officer of such exchange, clearing association or similar organization. Walston secured or agreed to secure as promptly as possible after the Closing any and all required consents and approvals of such exchanges, associations and membership organizations. duPont agreed to cooperate with Walston in obtaining any and all required consents and approvals. Walston agreed to execute or cause to be executed such deeds, assignments and other instruments of conveyance, transfer and assignment, including a-b-c agreements, in form and substance satisfactory to duPont and duPont's counsel, as shall be necessary or appropriate to effectuate the transfer of the Exchange Memberships and such other memberships or in any other reasonable arrangement requested by duPont to provide duPont, on as economical a basis as possible, with the same rights and benefits as would have been provided to duPont as the result of a valid and effective transfer of such Exchange Memberships and such other memberships to duPont. Walston agreed to pay any fee for the transfer or registration in duPont's name of any Exchange Membership purchased or other membership subsequently requested by duPont. duPont agreed not to request Walston to sell, convey, assign, transfer or deliver any other membership if Walston would not thereafter retain at least one membership in any such exchange, clearing association or similar organization as Walston in its sole discretion deems desirable.

3.5 *Management Fees.* Walston agreed to pay to duPont any and all management fees earned by Walston as managing underwriter of the duPont financings listed on schedule 3.2(j) delivered to Walston at the Closing, net of all unreimbursed expenses incurred in respect of such duPont financings, including without limitation legal fees.

3.6 *Instruments of Conveyance.* This signed Memorandum of Sale was deemed to constitute a deed, bill of sale, endorsement, assignment, draft, check or such other instrument of sale, conveyance, transfer or assignment pursuant to which all right, title and interest of (a) duPont in and to the Transferred Assets was sold, conveyed, transferred and assigned to Walston, and (b) Walston in and to the accounts and related securities positions referred to in Section 3.3, the

Exchange Memberships referred to in Section 3.4 and the management fees referred to in Section 3.5 were sold, conveyed, transferred and assigned to duPont. duPont and Walston each agreed, from time to time after the Closing Date, upon the request of the other and without further consideration, to do, execute, acknowledge and deliver, or to cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, consents and assurances as might be required more effectively to convey, assign, transfer, set over and deliver to, and to vest, perfect and confirm in, Walston all of duPont's right, title and interest in and to the Transferred Assets, and in duPont all of Walston's right, title and interest in and to the said accounts and related securities positions, the Exchange Memberships and the said management fees.

3.7 *Consents, No Breach.* Notwithstanding anything herein to the contrary, this Agreement shall not, as to third parties, be deemed to constitute a sale, assignment or transfer of any rights or interest of duPont in, or of any lease, contract or agreement that would otherwise be a Transferred Asset if an attempted sale, assignment or transfer of the same, without the consent of a third party thereto, would constitute a breach thereof, until such time as the required consent is obtained; provided, however, that as between duPont and Walston, Walston shall be and remain liable for any and all obligations with respect thereto attributable to any period commencing on or after the Closing Date. duPont and Walston each agreed to use its best efforts to obtain such consents. If any such consent is not obtained, or if the sale, assignment or transfer of any such lease, contract or agreement without such consent would constitute a breach thereof by duPont, or otherwise would adversely affect the rights thereunder of duPont or of Walston as purchaser, assignee or transferee, duPont agreed to cooperate with Walston in any reasonable arrangement requested by Walston to provide to Walston the same rights and benefits under and with respect to such contract, lease or agreement as would have been provided to Walston as the result of a valid and effective sale, assignment or transfer thereof. Pending the effective sale, assignment or transfer of any such contract, lease or agreement, duPont granted Walston whatever rights of occupancy or use duPont had the authority to grant in the absence of such effective assignment or transfer.

ARTICLE IV

Purchase Price

4.1 *Computation of Purchase Price.* Subject to the terms and conditions of this Agreement, Walston agreed to pay duPont the net book value as of the time immediately prior to the opening of business on July 2, 1973 of the Transferred Assets (other than for the Transferred Securities and certain Transferred Assets listed in Section 3.1(f)). Such book value shall be as set forth on the unaudited Balance Sheet of duPont which unaudited Balance Sheet shall be as set forth in duPont's Joint Regulatory Report for the month of June 1973 and as adjusted for any extraordinary devaluation in the Transferred Assets occurring prior to the opening of business on July 2, 1973, a signed copy of which will be delivered to Walston as promptly as practicable after the Closing. Such unaudited Balance Sheet will be prepared on the same basis as duPont's unaudited Balance Sheet included in its Joint Regulatory Report for May, 1973, a copy of which was delivered to Walston prior to the Closing.

With respect to the Transferred Securities, Walston agreed to pay duPont as promptly as practicable, but no later than on the 30th day after the Closing, an amount equal to (i) the last sale price per share or per unit on June 29, 1973 on the principal securities or commodities exchange on which a particular Transferred Security was then listed, or (ii) if no sale took place on any such exchange on such date with respect to such Transferred Security listed or admitted to trading on any such exchange, the average of the closing bid and asked prices per share or per unit on such date as officially quoted on such exchange, or (iii) if any such Transferred Security was not then listed or admitted to trading on any securities or commodities exchange, the average of the closing reported bid and asked prices per share or per unit on such date in the over-the-counter market, less in all such cases enumerated in clauses (i) through (iii) of this Section 4.1 the amount of liabilities assumed by Walston pursuant to Section 5.1 hereof with respect thereto, and as adjusted for any extraordinary change in the market price of such Transferred Securities resulting from events occurring after the close of business on June 29, 1972 and prior to the opening of business on the Closing Date.

With respect to office supplies, packaging and shipping materials and other supplies and supply inventories included among the Transferred Assets pursuant to Section 3.1(f), Walston agreed to pay duPont, as promptly as practicable, but no later than on the 30th day after the Closing, the lesser of $450,000 or the fair market value of such Transferred Assets to the extent no value is attributed thereto on the unaudited Balance Sheet of duPont as at June 30, 1973 and to the extent that such Transferred Assets are useable by Walston in the conduct of its business after the Closing Date. duPont and Walston agreed that such fair market value would be ascertained based upon mutual agreement after consideration of recent invoices for such Transferred Assets, duPont's historical inventories for such categories of Transferred Assets and such other methods of evaluation as the parties shall agree upon in connection therewith.

With respect to the accounts transferred by Walston to duPont, referred to in Section 3.3, and the other assets transferred hereunder (other than the Exchange Memberships) no purchase price was payable, the consideration for such transfer being the other party's assumption of certain liabilities as hereinafter provided.

4.2 *Payment of Purchase Price.* With respect to the Transferred Assets and all other assets being conveyed pursuant to this Agreement, the Master Agreement, the Clearing Agreement or any other agreement entered into by duPont and Walston pursuant to the Master Agreement (but not the Capital Agreement), the parties agreed that all payments to be made by one to the other (unless otherwise expressly provided) shall be netted against all other payments, and only one payment be made on account thereof. Such payment shall be in cash, and made on the 30th day after the Closing unless the parties agree to a different date or procedure, such as the creation of an omnibus account or intercompany receivable or otherwise.

ARTICLE V

Assumption of Liabilities

5.1 *Assumption of Liabilities by Walston.* Walston assumed and agreed to perform, pay and discharge when due all the absolute or

contingent liabilities of duPont existing on the Closing Date with respect to the Transferred Assets, provided that such liabilities were reflected on duPont's unaudited Balance Sheet included in its Joint Regulatory Report for May, 1973 or were incurred thereafter and are reflected in duPont's Balance Sheet referred to in Section 4.1 (including, but not limited to, all of duPont's liabilities with respect to short security or commodity positions in duPont's firm account and all obligations of duPont under outstanding options in duPont's firm account). Walston assumed and agreed to perform, pay and discharge when due all obligations, commitments and undertakings, whether absolute or contingent, with respect to the Transferred Assets, including the Transferred Offices and other leased property, arising from and after the Closing Date other than liabilities asserted against duPont by landlords of the Transferred Offices based solely on an alleged breach of a nonassignability clause in a lease for a Transferred Office; provided, however, that with respect to the Transferred Offices listed on schedule 5.1 delivered to Walston at the Closing, which offices were closed after June 1, 1973, Walston assumed duPont's lease obligations from and after June 1, 1973. Walston did not assume or agree to pay, perform or discharge any debts, obligations, contracts, commitments, undertakings or liabilities with respect to the Retained Assets (unless otherwise specifically agreed in one of the agreements between the parties hereto referred to in the Master Agreement). Walston agreed to use its best efforts to effect the release of duPont from all liability from and after the Closing Date to landlords of the Transferred Offices or other lessors of Transferred Assets.

5.2 *Assumption of Liabilities by duPont.* duPont assumed and agreed to perform, pay and discharge when due all the liabilities and obligations of Walston existing at the opening of business on July 2, 1973 with respect to the Walston accounts described in Section 3.3 provided that such liabilities were reflected in Walston's unaudited Balance Sheet included in its Joint Regulatory Report for May, 1973 or were incurred thereafter and are reflected on Walston's Unaudited Balance Sheet included in its Joint Regulatory Report for June, 1973, and with respect to legal fees on any of the financings referred to in Section 3.2(j) which are not completed.

ARTICLE VI

Representations and Warranties of duPont

duPont represented and warranted to Walston that as at the time immediately prior to the Closing:

6.1 *Title.* duPont has good and marketable title to the Transferred Securities.

6.2 *Leases, Contracts and Agreements.* With respect to the real and personal property leases included in the Transferred Assets, duPont has not, to the best of the knowledge of its senior management, received any notice of default or termination or abatement of rent resulting from partial casualty to or partial condemnation of the leased property.

6.3 *Labor Agreements.* duPont is not a party to any collective bargaining agreement with any trade or labor union, guild or similar organization.

6.4 *Employment Contracts.* duPont is not a party with respect to employees at the Transferred Offices to any material employment contract, commission agreement or other agreement providing for the payment of compensation not terminable by duPont at will, other than agreements with account executives who have chosen duPont's Plan B compensation plan. duPont is not a party to any pension or retirement contract (other than gratuity funds of securities and commodities exchanges) except the duPont Profit-Sharing Plan and Trust (a copy of which Plan and Trust Agreement as in effect on the date hereof was delivered to Walston).

6.5 *Rental Payments on Leases.* duPont has paid or made provision for payment of all rents due under the leases for the Transferred Offices through June 30, 1973.

6.6 *Securities.* The Transferred Securities may be freely sold or transferred by duPont without registration under the Securities Act of 1933 and there are no existing contractual arrangements or commitments which would prevent such a sale.

6.7 *Registration of Employees.* All registered representatives of duPont are registered or qualified with all appropriate governmental agencies and self-regulatory authorities as are materially required to carry on their activities as securities salesmen as conducted prior to the Closing Date.

6.8 *Filings.* With respect to the Transferred Offices, duPont has filed or will promptly file all material reports and returns required by law, rule, regulation or policy of any governmental agency or self-regulatory authority or industry association, and all such reports and returns are or will be complete and correct in all material respects.

ARTICLE VII

Covenants

7.1 *Covenants of duPont.* duPont covenanted that it will (i) use its best efforts to obtain all consents and approvals of governmental agencies and self-regulatory authorities necessary to confirm the sales, assignments and transfers provided for in this Agreement; (ii) file, in correct and complete form, all reports, returns and other forms and all other documents required by such agencies and authorities to be filed by duPont in connection with such transactions; (iii) deliver to Walston copies of all such consents and approvals which are obtained in writing by duPont and of all such reports, returns, forms and other documents which are filed by duPont with such agencies and authorities; and (iv) use its best efforts and cooperate with Walston to effect the sale to Walston, at the book value thereof at June 30, 1973, of its incorporated foreign sales corporations included in Schedule 3.2(h), and to liquidate, dissolve or transfer to a third party for Walston's account the capital stock of any such corporation, or the assets, business and liabilities of any such corporation, all as Walston may reasonably request.

7.2 *Covenants of Walston.* Walston covenanted that it will (i) use its best efforts to obtain all consents and approvals of governmental agencies and self-regulatory authorities necessary to confirm the purchases, assignments and transfers provided for in this Agreement; (ii) file, in correct and complete form, all reports, returns and

other forms and all other documents required by such agencies and authorities to be filed by Walston in connection with such transactions; (iii) deliver to duPont copies of all such consents and approvals which are obtained in writing by Walston and all such reports, returns, forms and other documents which are filed by Walston with such agencies and authorities; (iv) with respect to any leases transferred hereunder as part of the Transferred Assets, be responsible for all expenses incurred in connection therewith, including any costs of termination, other than on account of rent payments and other liabilities which arise from occupancy or matters occurring before the Closing; provided, however, in the case of the Transferred Offices listed on Schedule 3.1(b) which were closed after June 1, 1973, be responsible for, or reimburse duPont for rent payments for the month of June, 1973; and (v) reimburse duPont for all expenses incurred by duPont from and after July 2, 1973, including costs of termination, relating to the foreign sales corporations offices included in Schedule 3.2(h), except to the extent reimbursement is effected pursuant to the Clearing Agreement in computing the Adjustment Charge (as defined therein).

ARTICLE VIII

Indemnification

8.1 *Indemnification of Walston.* duPont indemnified and agreed to hold Walston and any of its affiliates (as defined in Section 1.3 of the Master Agreement) harmless from, against and in respect to:

(a) Any and all liabilities or claims of any nature, whether accrued, absolute, contingent or otherwise, based upon any and all liabilities of or claims against duPont not assumed by Walston hereunder or under the Clearing Agreement;

(b) Any and all liabilities or claims of any nature, whether accrued, absolute, contingent or otherwise, based upon any and all liabilities of or claims against Walston assumed by duPont hereunder;

(c) Any and all liability, damage, or expense resulting from any material misrepresentation, breach of warranty, or nonfulfillment of any agreement on the part of duPont contained in this Agreement; and

(d) Any and all actions, suits, proceedings, investigations, demands, assessments or judgments, and reasonable costs and

expenses, including reasonable attorneys' fees, incident to the foregoing.

8.2 *Indemnification of duPont.* Walston indemnified and agreed to hold duPont and any of its affiliates (as defined in Section 1.3 of the Master Agreement) harmless from, against and in respect to:

(a) Any and all liabilities or claims of any nature, whether accrued, absolute, contingent or otherwise, based upon any and all liabilities of or claims against Walston not assumed by duPont hereunder or under the Clearing Agreement;

(b) Any and all liabilities or claims of any nature, whether accrued, absolute, contingent or otherwise, based upon any and all liabilities of duPont assumed by Walston hereunder;

(c) Any and all liability, damage or expense resulting from any material misrepresentation, breach of any warranty, or non-fulfillment of any agreement, on the part of Walston, contained in this Agreement;

(d) Any and all loss, liability, damage or expense incurred as the result of the condition of the customer related accounts and related securities positions transferred to duPont and referred to herein in Section 3.3; and

(e) Any and all actions, suits, proceedings, investigations, demands, assessments or judgments, and reasonable costs and expenses, including reasonable attorneys' fees, incident to the foregoing.

8.3 *Notice; Defense of Proceedings, etc.* In the event that any legal proceeding shall be instituted or that any claim or demand shall be asserted by any person in respect of which indemnification may be sought from an indemnifying party under the provisions of this Article VIII, the indemnified party agreed to cause notice thereof to be given to the indemnifying party. The indemnifying party shall have the right, at its own expense, to control the defense of, negotiate or settle any such legal proceeding, claim or demand, and duPont and Walston agreed to cooperate fully with each other in connection with any such defense, negotiation or settlement.

8.4 *Indemnity Payments.* On each occasion that an indemnified party shall be entitled to indemnification or reimbursement under this Article VIII, the indemnifying party agreed, at each such time, promptly to pay the amount of such indemnification or reimbursement or, if an intercompany or omnibus account exists between Walston and duPont at the time pursuant to the Clearing Agreement or otherwise, to make an appropriate entry therein reflecting the indemnifying party's obligation to the indemnified party.

8.5 *Limitation of Indemnification.* The indemnifications provided for herein shall apply only to direct and proximate damage; notwithstanding anything herein contained to the contrary, neither duPont nor Walston shall be liable for punitive, consequential or indirect damages, including but not limited to, damages for lost profits.

ARTICLE IX

Miscellaneous

9.1 *Stock Transfer Tax.* duPont agreed to pay any stock transfer tax owing with respect to the transfer of the Transferred Securities.

9.2 *Sales Tax.* Walston agreed to pay any sales tax owing with respect to the transfer of the Transferred Assets.

9.3 *Benefits and Burdens.* The parties agreed that this Agreement shall be binding upon and shall inure solely to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, was intended to and shall not under any circumstances create any enforceable right or benefit in any other person whatsoever, nor shall any other person whatsoever be entitled to have any claim, cause of action or right based upon or arising out of the existence of this Agreement or the consummation of the transactions described herein.

9.4 *Notices.* The parties agreed that notices hereunder shall be given as provided in the Master Agreement.

17

In Witness Whereof, the parties executed this Memorandum of Sale as of the day and year first above written.

Walston & Co., Inc.

By G. T. Thomson

duPont Glore Forgan Incorporated

By Morton Meyerson

SCHEDULES REFERRED TO IN THE TRANSFER AGREEMENT

1. Paragraph 3.1(a)—Transferred Securities—List of DGF's proprietary positions in stocks, bonds, commodities, options, including rights and securities owed DGF for its own account.

2. Paragraph 3.1(b)—List of Transferred Offices.

3. Paragraph 3.2(c)—Retained proprietary positions (restricted stocks).

4. Paragraph 3.2(h)—List of duPont's Subsidiaries.

5. Paragraph 3.2(j)—List of duPont financings.

6. Paragraph 3.4—Walston Exchange Memberships.

7. Paragraph 5.1—List of duPont offices closed in June.

[CONFORMED COPY]

EXHIBIT 3
to
Master Agreement

CAPITAL AGREEMENT

THIS AGREEMENT is entered into as of July 2, 1973, among PHM & Co., a Texas limited partnership ("PHM"), WALSTON & Co., INC., a Delaware corporation ("Walston"), and DUPONT GLORE FORGAN INCORPORATED, a Delaware corporation ("DGF").

WHEREAS, PHM, Walston, DGF and Charleston Investment Company ("Charleston") are parties to a Master Agreement, dated as of July 2, 1973 (the "Master Agreement"), pursuant to which PHM, Walston, Charleston and DGF are to enter into certain agreements for the purpose of carrying out a realignment of the respective businesses of Walston and DGF; and

WHEREAS, it is recognized that it is desirable that DGF be provided with additional capital for purposes of the capital rules of the New York Stock Exchange, Inc. (the "NYSE");

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties herein contained, it was agreed, as follows:

1. *The Walston Investment.* Walston made an aggregate cash investment in DGF of $16,700,000 (the "Walston Investment") as of the Closing (as such term is defined in the Master Agreement) with the intention that the Aggregate Indebtedness of DGF as of the Closing would not exceed 350 per centum of its Net Capital as of the Closing (as those terms are defined in the rules of the NYSE as of the Closing) and that the debt to equity ratio of DGF as of the Closing would be 65:35 after giving effect to the consummation of the transactions contemplated to be consummated at or prior to the Closing by the Master Agreement, including the making of the Walston Investment and the PHM Investment referred to in Section 1.1 hereof. The Walston Investment was made as of the Closing by: (a) the purchase by Walston of 810 shares of DGF's Series Four Preferred Stock (which series had been created pursuant to the resolution a copy of which is set forth in Exhibit A hereto) at a purchase price of $10,000 per share; and (b) the purchase by Walston of a subordinated debenture of DGF sub-

stantially in the form of Exhibit B annexed hereto (a "DGF Debenture") in the principal amount of $8,600,000. The Walston Investment, plus any additional investment made by Walston pursuant to Section 1.2, is hereinafter referred to as the "Walston Adjusted Investment".

1.1 *The PHM Investment.* Subsequent to June 5, 1973, and at or prior to the Closing, PHM and/or its affiliates (as defined in Section 1.3 of the Master Agreement and, together with PHM, hereinafter referred to as the "PHM Interests") invested an aggregate of $12,800,000 (the "PHM Investment") in DGF with the intention that the Aggregate Indebtedness of DGF as of the Closing would not exceed 950 per centum of its Net Capital as of the Closing and that the debt to equity ratio of DGF as of the Closing would be 65:35 after giving effect to the consummation of the transactions contemplated to be consummated at or prior to the Closing by the Master Agreement, including the making of the Walston Investment and the PHM Investment. The PHM Investment was made by: (a) the execution and delivery by H. R. Perot ("Perot") and DGF of an amendment substantially in the form of Exhibit C hereto to the secured demand note collateral agreement, dated March 29, 1973, between Perot and DGF which amendment, among other things, increased the Indebtedness (as therein defined) of the secured demand note issued on March 29, 1973, by Perot to DGF, to $5,200,000, and by the deposit of the requisite additional collateral thereunder; and (b) the deposit by Perot with DGF pursuant to the ASA Collateral Account Agreement, dated April 6, 1972, between Perot and DGF (the "ASA Agreement") of cash or securities having a Capital Requirements Value (as defined in the ASA Agreement) as of the Closing of not less than $7,604,500.

1.2 *Additional Investments.* In the event that DGF's Joint Regulatory Report for June, 1973, as adjusted to reflect the Walston Investment, the PHM Investment and the consummation of the transactions contemplated by the Master Agreement to be consummated at or prior to the Closing, shows that DGF's Net Capital as of the Closing was less than 10/95ths of its Aggregate Indebtedness as of the Closing or that less than 35% of DGF's Net Worth as of the Closing was attributable to equity within the meaning of the rules of the NYSE, DGF shall promptly give written notice to Walston and PHM of the amount of such deficiency (the "Deficiency"). If within 10 days thereafter the PHM Interests or Walston gives the other written notice of

its intention to make an additional investment (an "Additional Investment") of its Proportionate Share (as hereinafter defined) of the Deficiency, then Walston and the PHM Interests shall each make an Additional Investment of its Proportionate Share of the deficiency within 10 days of receipt of such notice from the other. If neither the PHM Interests nor Walston elects to make an Additional Investment, there shall be no obligation for the other to make any Additional Investment. As used herein, the Walston Proportionate Share means the dollar amount of the Deficiency which bears the same ratio to the total Deficiency as the Walston Investment bears to the sum of the PHM Investment and the Walston Investment, and the PHM Interests Proportionate Share means the dollar amount of the total Deficiency which bears the same ratio to the total Deficiency as the PHM Investment bears to the sum of the PHM Investment and the Walston Investment. The Walston Proportionate Share shall be invested as follows: (a) Walston will purchase such additional number of whole shares of DGF's Series Four Preferred Stock, at a purchase price of $10,000 per share, so that the aggregate purchase price for such additional shares is not less than 35% of the Walston Proportionate Share; and (b) Walston will purchase a DGF Debenture in the principal amount of 65% of the Walston Proportionate Share, less the amount in excess of 35% of the Walston Proportionate Share, if any, which Walston paid for the aforesaid shares of DGF's Series Four Preferred Stock. PHM will cause the PHM Interests Proportionate Share to be invested as follows: (a) either (i) Perot and DGF will amend the secured demand note referred to in Section 1.1 to increase the Indebtedness thereunder by not less than 35% of the PHM Interests Proportionate Share and Perot will deposit cash or securities as collateral therefor pursuant to the secured demand note collateral agreement referred to in Section 1.1 having a Capital Requirements Value, when added to the collateral already contributed, of not less than the Indebtedness as so increased, or (ii) the PHM Interests will purchase shares of Series Four Preferred Stock at a price of $10,000 per share so that the aggregate purchase price for such shares is not less than 35% of the PHM Interests Proportionate Share, or (iii) any combination of (i) and (ii) as long as the amount of the increase of such Indebtedness and the purchase price of such shares aggregates not less than 35% of the PHM Interests Proportionate Share; and (b) Perot will contribute pursuant to the ASA Agreement cash or securities having a Capital Requirements Value of, or the PHM Interests will purchase a DGF Debenture having a principal amount equal to, not less than 65% of the PHM Interests Proportionate Share, less the amount in excess of 35% of the PHM

Interests Proportionate Share, if any, represented by the preceding clause (a); *provided, however,* that, if the investment by Perot pursuant to deposits under the ASA Agreement would result in the aggregate of such securities on deposit pursuant to such agreement having a Capital Requirements Value in excess of the lesser of $12.5 million or the then debit balance in the Acquisition Settlement Account maintained on DGF's books, then the amount of any such excess shall be invested either pursuant to clause (a) or in a DGF Debenture.

Notwithstanding the foregoing, if giving effect to the making of the investments described in this Section 1.2, less than 35% of DGF's Net Worth (as defined in the rules of the Exchange) would as of the Closing have been attributable to equity under the rules of the NYSE, Walston and the PHM Interests shall each increase the equity portions of their respective Additional Investments in proportion to their Proportionate Share so that not less than 35% of DGF's Net Worth as of the Closing would have been attributable to equity under the NYSE rules.

2. *Repayment of the Walston Investment.* At any time when the Aggregate Indebtedness of Walston exceeds 700 per centum of its Net Capital and its Net Capital is less than $7,000,000 in excess of that amount necessary so that its Aggregate Indebtedness does not exceed 1,000 per centum of its Net Capital, Walston may from time to time, upon 5 business days' prior written notice to DGF and the NYSE, demand and, upon receipt by DGF of the prior written approval of the NYSE (which approval DGF shall use its best efforts to obtain), shall have repaid to it by DGF, subject to the conditions hereinafter set forth, such part of the Walston Adjusted Investment as is necessary so that the Aggregate Indebtedness of Walston does not exceed 700 per centum of its Net Capital.

2.1 *Repayment of DGF Debentures.* To the extent that any demand for repayment of the Walston Adjusted Investment does not exceed the aggregate principal amount of the then outstanding DGF Debentures issued pursuant to this Agreement, such demand shall be satisfied by DGF by repayment of any DGF Debentures held by Walston; provided, however, that DGF's obligations to effect such repayment may be suspended as set forth in the DGF Debentures.

2.2 *Purchase of Repayment Debentures.* To the extent that any demand for repayment of the Walston Adjusted Investment hereunder exceeds the aggregate principal amount of the DGF Debentures issued

pursuant to this Agreement, such demand shall then be satisfied, subject to the prior written approval of the NYSE (which approval DGF shall use its best efforts to obtain), by the purchase for cash by DGF from Walston of a debenture substantially in the form of Exhibit D annexed hereto (a "Repayment Debenture") in the appropriate principal amount:

A. DGF shall in no event be required to purchase a Repayment Debenture or Repayment Debentures in an aggregate principal amount in excess of the Walston Adjusted Investment less the sum of any repayments of any DGF Debentures, the proceeds of any sale by Walston or redemption by DGF from Walston of Series Four Preferred Stock of DGF and the principal amount of any DGF Debentures transferred or otherwise disposed of by Walston.

B. Subject to the conditions set forth in Section 2 above and Section 2.2(C) below, DGF will purchase for cash any Repayment Debenture to be purchased hereunder within five business days of receiving the written demand referred to in Section 2.

C. The obligation of DGF to purchase a Repayment Debenture shall be suspended for any period of time during which after giving effect to such purchase (together with (a) the payment of any other obligation of DGF payable at or prior to the date of such purchase (the "purchase date") and (b) the return of any secured demand note and the collateral therefor held by DGF and returnable at or prior to the purchase date) (i) the Aggregate Indebtedness of DGF would exceed 1000 per centum of its Net Capital or such lesser per centum as may be made applicable to DGF from time to time by the NYSE or a governmental agency or body having appropriate authority with respect to restriction of its business, or (ii) its Net Capital would be less than the minimum dollar amount required by such Rules of the NYSE in effect at such time or such greater dollar amount as may be made applicable to DGF by a governmental agency or self-regulatory body having appropriate authority (the Net Capital necessary to enable DGF to comply with such 1000 or lesser per centum and such minimum dollar amount or such greater dollar amount are hereinafter referred to as the "Applicable Minimum Capital"). During any such suspension DGF shall use its best efforts to obtain cap-

ital on reasonable terms so that the purchase which it is obligated to make hereunder could be made (together with (a) the payment of any other obligation of DGF payable at or prior to the purchase date and (b) the return of any secured demand note and the collateral therefor held by DGF and returnable at or prior to the purchase date hereunder) without DGF's Net Capital falling below the Applicable Minimum Capital, at which time DGF shall upon five days written notice to Walston and the NYSE, make the purchase which it is obligated to make hereunder.

2.3 *No Notice of Withdrawal.* No demand for repayment of the Walston Adjusted Investment or any portion thereof shall be deemed to constitute a notice for the withdrawal of capital within the meaning of NYSE Rules 325 or 326 until actual repayment of a DGF Debenture or purchase of a Repayment Debenture.

3. *Withdrawal of PHM Investment.* Except to the extent that the shares of the Series Four Preferred Stock issued to Walston pursuant to this agreement are repurchased by DGF or Walston sells or otherwise disposes of such shares, the Indebtedness represented by the secured demand note referred to in Section 1.1(a) may not be reduced (except by payment thereof), including a reduction effected as a consequence of a return or withdrawal of such secured demand note and the issuance of a new note as required by the secured demand note collateral agreement. Any reduction in such secured demand note permitted by the foregoing sentence shall be at the rate of $10,000 for each share of Series Four Preferred Stock so repurchased, sold or otherwise disposed of. The secured demand note may not be withdrawn or returned in full except after 520 of such shares, plus that number of such shares, if any, purchased by Walston pursuant to Section 1.2 as equals (valuing each such share at $10,000) the equity portion of the Additional Investment by the PHM Interests, has been repurchased, sold or otherwise disposed of.

4. *Limitation of Rights.* Nothing herein contained shall be deemed to make Walston a general creditor of DGF, and its rights with respect to the DGF Debenture and to sell to DGF any Repayment Debenture are and shall remain subordinated to the rights of all present and future general creditors of DGF, to the same extent as provided in the DGF Debenture as if the subordination provision therein were set forth herein.

5. *No Additional Investment.* Except pursuant to Section 1.2 hereof, nothing herein contained shall be deemed to require the PHM Interests or Walston to make any contribution, or otherwise furnish any capital, to DGF.

IN WITNESS WHEREOF, PHM, Walston and DGF have signed this Agreement as of the date first above written.

PHM & Co.

By H. R. PEROT
General Partner

DUPONT GLORE FORGAN
INCORPORATED

By MORTON MEYERSON

WALSTON & CO., INC.

By G. T. THOMSON

EXHIBIT A
to the
Capital Agreement

CERTIFICATE OF RESOLUTIONS CREATING SERIES FOUR PREFERRED STOCK OF duPONT GLORE FORGAN INCORPORATED

(Pursuant to Section 151(g) of the
Delaware General Corporation Law)

duPont Glore Forgan Incorporated (hereinafter called the "corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

That, in accordance with the provisions of Article Fourth of the certificate of incorporation of the corporation, as amended, the following resolution was duly adopted by the Board of Directors of the corporation:

Resolved that pursuant to the authority vested in the Board of Directors of the corporation by Article Fourth of the corporation's certificate of incorporation, as amended, a series of Preferred Stock of the corporation be, and it hereby is, created out of the authorized but unissued shares of the capital stock of the corporation, such series to be designated Series Four Preferred Stock (the "Series Four Preferred Stock"), to consist of 2,000 shares, par value $1.00 per share, of which the preferences and relative and other rights, and the qualifications, limitations or restrictions thereof, shall be as follows (in addition to those fixed by Articles Fourth, Fifth and Sixth of the corporation's certificate of incorporation):

1. Certain Definitions.

Unless the context otherwise requires, the terms defined in this paragraph 1 shall have, for all purposes of this resolution, the meanings herein specified.

(a) *Common Stock.* The term "Common Stock" shall mean all shares now or hereafter authorized of Class A Common Stock and Class B Common Stock of the corporation and any other stock of the corporation howsoever designated, whether now or hereafter authorized, which has the right (subject always to prior rights of

the Preferred Stock) to participate in the distribution of the assets and earnings of the corporation without limit as to amount or percentage.

(b) *Junior Stock.* For purposes of paragraph 2 below the term "Junior Stock" shall mean Common Stock and shall also mean any other class or series of stock of the corporation, whether now or hereafter authorized, not entitled to receive any dividends in any dividend period until all dividends for such dividend period shall have been paid or declared and set apart on the Series Four Preferred Stock.

(c) *Parity Stock.* The term "Parity Stock", for purposes of paragraph 2 below, shall mean any class or series of stock of the corporation, whether now or hereafter authorized, entitled to receive payment of dividends *pari passu* with the Series Four Preferred Stock.

(d) *Senior Stock.* The term "Senior Stock" shall mean, for purposes of subparagraph (f) and paragraph 2 below, the Series One Preferred Stock, Series Two Preferred Stock and Series Three Preferred Stock and any class or series of stock of the corporation, whether now or hereafter authorized, ranking senior to the Series Four Preferred Stock in respect of the right to receive dividends and, for purposes of paragraph 3 below, shall also mean the Series One Preferred Stock, Series Two Preferred Stock and Series Three Preferred Stock and any class or series of stock of the corporation, whether now or hereafter authorized, ranking senior to the Series Four Preferred Stock in respect of the right to participate in any distribution upon liquidation, dissolution or winding up of the affairs of the corporation.

(e) *After Tax Net Income.* The term "After Tax Net Income" for any fiscal year (including the partial year commencing with the date of issuance of the Series Four Preferred Stock) shall be computed within 120 days after the end of such year and shall mean the net income of the corporation and its subsidiaries on a consolidated basis (after giving effect to all extraordinary, capital and non-recurring items), determined in accordance with generally accepted accounting principles, and after deduction of all taxes (United States, state, local and foreign), including taxes

based on or measured by income. For the purposes hereof, the fiscal year of the corporation shall be the initial fiscal year of the corporation and each twelve month period thereafter. All determinations of After Tax Net Income made in good faith by the Board of Directors of the corporation shall be final and conclusive for all purposes hereof. In making such determination, the Board of Directors may rely upon computations made by the firm of independent public accountants which regularly examines the corporation's financial statements.

(f) *Amount Available for Dividend Distribution.* The term "Amount Available for Dividend Distribution" shall mean the difference between (i) the lesser of the After Tax Net Income for the preceding fiscal year or the earned surplus legally available for the payment of cash dividends to the holders of the Series Four Preferred Stock, less (ii) the amount thereof payable as cash dividends on any Senior Stock.

2. DIVIDENDS.

(a) *General.* Subject to the provisions of paragraph (a) of Section 3 of Article FOURTH of the certificate of incorporation and the preferences and other rights of any Senior Stock, the holders of the Series Four Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of any funds legally available for the purpose, cash dividends, in the amount set forth in subparagraph (b) below, payable within 120 days after the end of each fiscal year.

(b) *Amount of Dividend.* The amount of the annual dividend to which the holders of Series Four Preferred Stock shall be entitled pursuant to subparagraph (a) above shall be $400.00 per share, provided that the Amount Available for Dividend Distribution as of the end of the preceding fiscal year equals or exceeds the aggregate dividends for such fiscal year to which all holders of Series Four Preferred Stock and Parity Stock are entitled. If the Amount Available for Dividend Distribution for such fiscal year is less than such aggregate amount, then the aggregate dividend payment to which the holders of the Series Four Preferred Stock and Parity Stock for the fiscal year in question shall be equal to the Amount Available for Dividend Distribution (subject, however, to adjustment for the rounding down to the nearest whole cent of the dividend payable in respect of each share of Series Four Pre-

ferred Stock and each share of Parity Stock), and the dividends payable to holders of Series Four Preferred Stock and to holders of Parity Stock shall be reduced ratably in proportion to the full amounts to which they otherwise would be respectively entitled.

(c) *Preferential Status of Dividends on Series Four Preferred Stock.* Except in connection with the exercise of any right and option of the corporation under Article FIFTH of the certificate of incorporation, in no event, so long as any shares of the Series Four Preferred Stock shall be outstanding, shall any dividend whatsoever, whether in cash, property or otherwise, be declared or paid, nor shall any distribution be made, on any Junior Stock, nor shall any Junior Stock be purchased or redeemed by the corporation, nor shall any moneys be paid or made available for a sinking fund for the purchase or redemption of any Junior Stock, unless (i) all dividends, if any, to which the holders of Series Four Preferred Stock shall have been entitled for the preceding fiscal year shall have been paid or declared and a sum sufficient for the payment thereof set apart, and (ii) there shall exist at the time of such dividend, distribution, purchase, redemption or sinking fund payment earned surplus legally available therefor without regard to the consolidated net income of the corporation and its subsidiaries for the current fiscal year. The provisions of the preceding sentence shall not, however, apply to a dividend payable in shares of any class or series of Junior Stock of the corporation.

(d) No dividend shall be payable hereon in contravention of any law, rule or regulation adopted by the New York Stock Exchange, Inc. (the "Exchange") or any governmental agency or self-regulatory body having appropriate authority which precludes the payment of a dividend if as a result thereof the aggregate indebtedness of the corporation would exceed 1000 per centum of its net capital (as those terms are defined in the rules of the Exchange then in effect) or such lesser per centum as may be made applicable to the corporation from time to time by the Exchange or such governmental agency or self-regulatory body having appropriate authority.

(e) *Non-Cumulative Status of Dividends.* If for any fiscal year holders of the Series Four Preferred Stock shall not be paid a cash

dividend pursuant to the foregoing provisions of this paragraph 2, dividends for such year shall be non-cumulative and may not be accrued or paid thereafter.

3. Distributions upon Liquidation, Dissolution or Winding Up.

In the event of any voluntary or involuntary liquidation, dissolution or other winding up of the affairs of the corporation, after the rights of the holders of any other class or series of the corporation's capital stock other than Common Stock shall have been satisfied and before any distribution or payment shall be made to the holders of Common Stock, the holders of the Series Four Preferred Stock shall be entitled to be paid the sum of $1.00 per share in cash or in property (taken at its fair value as determined by the Board of Directors of the corporation) or both at the election of the Board of Directors. If such payment shall have been made in full to the holders of the Series Four Preferred Stock, the holders of Series Four Preferred Stock, as a class, shall be entitled to receive as a liquidation distribution forty-five per cent (45%) of the remaining assets and funds of the corporation and the holders of Common Stock, as a class, shall be entitled to receive fifty-five per cent (55%) of such assets and funds until the holders of Series Four Preferred Stock shall have received an aggregate distribution and payment of $10,000 per share of Series Four Preferred Stock and, thereafter, the holders of Series Four Preferred Stock shall not be entitled to receive any of such remaining assets and funds. Neither the consolidation or merger of the corporation into or with another corporation or corporations, nor the sale of all or substantially all of the corporation's assets as or substantially as an entirety, nor the distribution to the stockholders of the corporation of all or substantially all of the consideration received for such sale (unless such consideration or the net proceeds thereof, apart from the assumption of liabilities, consists substantially or entirely of cash), shall be deemed a liquidation, dissolution or winding up of the affairs of the corporation within the meaning of this paragraph 3.

4. Redemption by the Corporation.

The Series Four Preferred Stock may not be redeemed, in whole or in part, by the corporation. Nothing herein contained shall, however, be deemed to limit or impair the right of the corporation, subject

to any applicable provisions of the laws of the State of Delaware, to purchase any shares of Series Four Preferred Stock at public or private sale.

5. No Voting Rights. Except as may otherwise be required by law, the holders of Series Four Preferred Stock shall not be entitled to any right to vote or to receive notice of any meeting of the holders of the capital stock of the corporation or to exercise any voting power.

6. Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series Four Preferred Stock shall not have any preferences or relative, participating, optional or other special rights other than those specifically set forth in this resolution and in the certificate of incorporation of the corporation, as amended.

7. Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

In Witness Whereof, the corporation has caused its corporate seal to be affixed and this certificate to be signed by Morton H. Meyerson, its President, and attested to by G. Michael Boswell, its Secretary, this 1st day of July, 1973.

President

[corporate seal]

Attest:

Secretary

7

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

BE IT REMEMBERED, that, on the 1st day of July, 1973, personally came before me, a Notary Public in and for the County and State aforementioned, MORTON H. MEYERSON, President of duPONT GLORE FORGAN INCORPORATED, a corporation of the State of Delaware, and he duly executed said certificate before me and acknowledged said certificate to be his act and deed and the act and deed of said corporation and that the facts stated therein are true, and that the seal affixed to said certificate and attested by the Secretary of said corporation is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Notary Public

EXHIBIT B
to the
Capital Agreement

DUPONT GLORE FORGAN INCORPORATED

SENIOR SUBORDINATED DEBENTURE DUE JUNE 30, 1983

$8,600,000 Principal Amount July 2, 1973

1. DUPONT GLORE FORGAN INCORPORATED, a Delaware corporation ("DGF"), promises to pay to WALSTON & Co., INC. ("Walston") on June 30, 1983 (the "Fixed Payment Date"), at the principal office of DGF, $8,600,000 and interest from the date hereof, payable on the first day of each month commencing August 1, 1973 and upon payment in full, on the outstanding principal amount at an annual rate equal to the rate of one percent over the prime commercial rate prevailing on the fifteenth day of the preceding month at Bank of America National Trust and Savings Association in San Francisco, California. The obligation of DGF to make any principal payment hereon shall be suspended for any period of time during which after giving effect to such payment (together with (a) the payment of any other obligation of DGF payable at or prior to the payment hereof and (b) the return of any secured demand note and the collateral therefor held by DGF and returnable at or prior to the payment hereof): (i) the aggregate indebtedness of DGF would exceed 1200 per centum of its Net Capital as those terms are defined in the rules of the New York Stock Exchange, Inc. (the "Exchange") in effect at the time payment is to be made or such lesser per centum as may be made applicable to DGF from time to time by the Exchange or a governmental agency or self-regulatory body having appropriate authority or (ii) the Net Capital of DGF is less than the minimum dollar amount required by the rules of the Exchange in effect at such time or such greater dollar amount as may be made applicable to DGF by a governmental agency or self-regulatory body having appropriate authority (the Net Capital necessary to enable DGF to comply with such 1200 or lesser per centum and such minimum dollar amount or such greater dollar amount is hereinafter referred to as the "Applicable Minimum Capital"), and during any such suspension DGF shall, as promptly as consistent with the protection of its customers, reduce its business to a condition whereby the principal amount of this debenture with accrued interest thereon could be paid (together with (a) the payment of any other obligation of DGF

payable at or prior to the payment hereof and (b) the return of any secured demand note and the collateral therefor held by DGF and returnable at or prior to the payment hereof) without DGF's Net Capital being below the Applicable Minimum Capital, at which time DGF shall repay the principal amount hereof plus accrued interest thereon on not less than 5 days' prior written notice to the Exchange. The first date on which, under this paragraph, DGF has an obligation to pay the principal hereof, is hereinafter referred to as the maturity date. If pursuant to the terms hereof DGF's obligation to pay the principal amount hereof is suspended, DGF and Walston recognize and agree that DGF may be summarily suspended by the Exchange. DGF agrees that, if its obligation to pay the principal amount hereof is ever suspended for a period of six months, it will promptly take whatever steps are necessary to effect a rapid and orderly complete liquidation of its business.

2. Walston, by accepting this debenture, irrevocably agrees that the obligations of DGF under this debenture with respect to the payment of principal and interest are and shall be subordinate in right of payment and subject to the prior payment or provision for payment in full of all claims of all other present and future creditors of DGF whose claims are not similarly subordinated (claims hereunder shall rank *pari passu* with claims similarly subordinated) arising out of any matter occurring prior to the maturity date of this debenture. Walston's claims hereunder shall rank *pari passu* with (i) PHM's claims under DGF's Registered Senior Subordinated Debenture, No. 3, dated March 29, 1973 in the initial principal amount of $23,500,000; (ii) PHM's claims under the Secured Demand Collateral Agreement between PHM and DGF, dated March 29, 1973 and (iii) H. R. Perot's rights under that certain agreement, dated April 6, 1972, respecting the collateralization of Acquisition Settlement Account maintained by DGF, all as the same may from time to time be amended, and shall be senior to all subordinated indebtedness of DGF which is junior to claims under (i), (ii) or (iii). In the event of the appointment of a receiver or trustee of DGF or in the event of its insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 ("SIPA") or otherwise, its bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of DGF, Walston shall

not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of DGF until all claims of all other present and future creditors of DGF whose claims are senior hereto have been fully satisfied or provisions have been made therefor.

3. Payment of all or any part of the principal amount of this debenture prior to the maturity date (a "repayment") may be made by DGF only upon receipt of the prior written approval of the Exchange. Subject to the foregoing and only under the circumstances and subject to the provisions of Section 2 of the Capital Agreement, dated as of July 2, 1973, among PHM & Co., Walston and DGF, Walston at any time and from time to time may demand that DGF repay all or any portion of the principal amount of this debenture which is then outstanding and held by Walston, together with interest accrued thereon to date of payment and DGF shall make such repayment in cash to Walston within five business days of receiving such demand, except that the obligation of DGF to make such repayment shall be suspended for any period of time during which after giving effect to such repayment (together with (a) the payment of any other obligation of DGF payable at or prior to such repayment, except any obligations subordinated in right of payment to DGF's obligations under this debenture, and (b) the return of any secured demand note, except any secured demand note the return of which is subordinated in right of payment to DGF's obligations under this debenture, and the return of collateral therefor held by DGF and returnable at or prior to such repayment): (i) the Aggregate Indebtedness of DGF would exceed 1000 per centum of its Net Capital or any other minimum per centum at which restrictions are placed upon DGF's business applicable at the time of such repayment by the rules of the Exchange or a governmental agency or self-regulatory body having appropriate authority or (ii) its Net Capital would be less than the minimum dollar amount required at the time of such repayment by the rules of the Exchange or such greater dollar amount as may be made applicable to DGF by a governmental agency or self-regulatory body having appropriate authority (the Net Capital necessary to enable DGF to comply with such 1000 or lesser per centum and such minimum dollar amount or such greater dollar amount is hereinafter referred to as the "Repayment Applicable Minimum Capital"). If payment is made of all or any part of the principal of this debenture on or prior to the maturity date and if immediately after any such payment DGF's net capital is less than the Repayment Applicable Minimum Capital or the Applicable Minimum Capital, as the

case may be, Walston agrees irrevocably (whether or not Walston had any knowledge or notice of such fact at the time of any such payment) upon written notice by DGF to repay to DGF, its successors or assigns, the sum so paid if DGF's Net Capital was less than the Applicable Minimum Capital immediately prior to such payment (and if DGF's Net Capital was less than the Applicable Minimum Capital immediately after but not immediately prior to such payment, a sum equal to the difference between the Applicable Minimum Capital immediately after such payment and the Net Capital of DGF immediately after such payment), to be held by DGF pursuant to the provisions hereof as if such payment had never been made; provided, however, that any suit for the recovery of any such payment must be commenced within two years of the date of such payment.

4. The unpaid principal amount of this debenture shall forthwith mature, together with fixed interest accrued thereon, in the event of any receivership, insolvency, liquidation pursuant to SIPA or otherwise, bankruptcy, assignment for benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of DGF, but payment of the same shall remain subordinate as hereinabove set forth. For the purposes of this debenture, a liquidation of DGF, if not actually commenced earlier, shall be deemed to have commenced at the time it shall be deemed to have commenced under any instrument or agreement creating or evidencing indebtedness of DGF issued pursuant to Rule 325.20(4)(A)(ii) of the Exchange or any successor rule. Default in the payment of interest shall not accelerate the maturity of this debenture, and payment of this debenture shall remain subordinate as hereinabove set forth.

5. Walston by accepting this debenture irrevocably agrees that its purchase of this debenture is not being made in reliance upon the standing of DGF as a member organization of the Exchange or upon the Exchange's surveillance of DGF's financial position or its compliance with the constitution, rules and practices of the Exchange. Walston has made such investigation of DGF and its officers, directors and stockholders as Walston deems necessary and appropriate under the circumstances. Walston is not relying upon the Exchange to provide any information concerning or relating to DGF and agrees that the Exchange has no responsibility to disclose to Walston any information concerning

or relating to DGF which it may now, or at any future time, have. Walston agrees that neither the Exchange, its Special Trust Fund, nor any director, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to Walston with respect to this instrument or the repayment thereof or any interest thereon.

6. This debenture may not be transferred, sold, assigned, pledged or otherwise encumbered or otherwise disposed of, and no lien, charge or other encumbrance may be created or permitted to be created thereon without the prior written consent of the Exchange. Subject to the foregoing, this debenture is transferable by the registered holder hereof, in person or by duly authorized attorney, on the books of DGF to be kept for that purpose at the principal place of business of DGF, upon surrender and cancellation of this debenture and on presentation of a duly executed written instrument of transfer to any person whomsoever satisfactory to DGF and to the Exchange. DGF may deem and treat the person in whose name this debenture is registered as the absolute owner hereof for the purpose of such person receiving payment of or on account of the principal hereof and interest thereon, and for all other purposes, and shall not be affected by any notice to the contrary.

7. The provisions of this Debenture shall be binding upon Walston and DGF and their respective successors and assigns.

8. Any controversy arising out of or relating to this debenture shall be submitted to and settled by arbitration pursuant to the Constitution and Rules of the Exchange. DGF and Walston shall be conclusively bound by such arbitration.

9. This debenture is issued pursuant and is subject to the provisions of the Capital Agreement, dated as of July 2, 1973, among PHM & Co., DGF and Walston. No evidence or agreement affecting this indebtedness will hereafter be executed without the prior written consent of the Exchange.

10. This debenture shall be deemed to have been issued under, and shall be governed by, the laws of the State of New York in all respects.

DUPONT GLORE FORGAN INCORPORATED

By _____

EXHIBIT C
to the
Capital Agreement

SECURED DEMAND NOTE COLLATERAL AGREEMENT

BETWEEN

DUPONT GLORE FORGAN INCORPORATED

AND

H. R. PEROT

July 2, 1973

DUPONT GLORE FORGAN INCORPORATED
77 Water Street
New York, New York 10005

Dear Sirs:

I. GENERAL

The undersigned has executed in favor of you, duPont Glore Forgan Incorporated (the "Organization"), a Secured Demand Note of even date in the form of Annex I hereto. References herein to the "Note" shall be deemed to refer to such Secured Demand Note and to any Note substituted therefor in accordance with the terms hereof. The unpaid principal amount of the Note from time to time is hereinafter referred to as the "Indebtedness". By mutual agreement between the Organization and the undersigned, the Indebtedness may be increased from time to time.

II. PAYMENTS WITH RESPECT TO INDEBTEDNESS

The Organization promises to pay to the undersigned an amount equal to one-half of one per cent per annum of the Indebtedness. Unless otherwise agreed by the Organization and the undersigned, such payments shall be made to the undersigned on the last day of each month, commencing with the last day of the month during which this Agreement becomes effective.

III. THE COLLATERAL

As security for the payment of the Indebtedness evidenced by the Note, the undersigned hereby pledges to the Organization the securities

and cash, if any, described in Schedule A annexed to the Note, as the same may from time to time be amended in accordance with the terms hereof (the securities from time to time listed in said Schedule are herein referred to as the "Securities", and any securities, cash or other property at any time pledged hereunder are herein referred to as the "Collateral"). All Securities shall be fully paid for and in proper transferable form.

IV. Ownership and Property Rights with Respect to the Collateral

(a) *General.* Subject only to the prior rights of the Organization as pledgee hereunder and under the Note, until liquidated in accordance with Paragraph V(c) hereof, the undersigned shall have and retain full legal and beneficial ownership of the Collateral and shall have the benefit of any increases and bear the risk of any decreases in the value of such Collateral. Prior to such liquidation, the undersigned shall have the sole right to vote or consent with respect to the Securities included therein; shall have the sole right to any income therefrom or distribution thereon by payment of interest or dividends or otherwise, subject, however, to the right of the Organization to receive and hold as pledgee all dividends payable in securities and all partial and complete liquidating dividends; and shall pay all taxes, assessments or other charges upon or with respect to such Securities or the income therefrom or distributions thereon or the gain or loss of value thereof.

(b) *Purchases and Sales of Collateral.* The undersigned shall have the right at any time and from time to time to direct the sale of any or all of the Securities and to direct the purchase of securities with any cash included in the Collateral; provided, however, that the net proceeds (exclusive of accrued interest) of any such sale, and the securities so purchased are held by the Organization as Collateral for such Note; and provided further, that no such transaction shall be permitted if after giving effect thereto, the value of the Collateral determined in accordance with the capital requirements rules and regulations of the New York Stock Exchange, Inc. (the "Exchange") (the "Capital Requirements Value") would be less than the Indebtedness. The undersigned shall have the right to pledge additional cash or securities as Collateral.

(c) *Withdrawal or Substitution of Collateral.* The undersigned shall have the right, subject to Paragraph V(c)(ii), at any time and

from time to time to withdraw the whole or any part of the Collateral; provided that the Capital Requirements Value of the remaining Collateral is at least equal to the Indebtedness.

V. Rights of the Organization

The Organization, as the holder of the Note and pledgee of the Collateral, shall (without limiting its other rights) be entitled:

(a) To deposit any cash from time to time pledged as Collateral in an account or accounts in its own name in any bank or trust company, and to hold the Securities in bearer form, in its own name, or in the name of its nominee.

(b) With the prior written consent of the Exchange to reduce the unpaid principal amount of the Note.

(c) If the Note is not paid upon presentment and demand as therein provided, to liquidate all or any part of the Collateral and to apply the proceeds of such liquidation (together with any cash included in the Collateral) in payment, in whole or in part, of the Indebtedness. If the Capital Requirements Value of the Collateral is at any time less than the Indebtedness, the Organization shall give written notice to the undersigned, in which event the undersigned may at its option:

(i) pledge additional collateral to bring the Capital Requirements Value of the Collateral to or above the Indebtedness; or

(ii) with the prior written consent of the Exchange and the Organization, reduce the unpaid principal amount of the Note by not more than 15 per cent, provided that the Organization clearly establishes that its aggregate indebtedness would not, after such reduction, exceed 1000 per centum of its net capital (as those terms are defined in the rules of the Exchange in effect at the time) and in the event of such reduction the right of the undersigned to withdraw Collateral as provided in IV(c) shall be suspended.

Unless the unpaid principal amount of the Note is so reduced or such additional Collateral is so pledged prior to twelve o'clock noon, New York time, on the business day next succeeding the giving of such notice, the Organization shall forthwith sell all or any part

of the Collateral for the account of the undersigned and apply so much of the proceeds thereof and any cash then included in the Collateral as may be necessary to reduce or eliminate the Indebtedness, provided that the Indebtedness need not be reduced below the Capital Requirements Value of the remaining Collateral. In no event will the sale of the Collateral and the application of the proceeds be considered an exchange of the Collateral for the preferred stock issued pursuant to Paragraph VI.

Any liquidation above provided for may be effected by a sale or sales for cash or otherwise, upon an exchange or in the over-the-counter market, or at any other public or private sale, and with or without any advertisement or notice whatsoever, as the Organization in its sole discretion shall determine. The purchaser of any securities at any such sale shall take the same free of any right of redemption and any other right or claim on the part of the undersigned, all of which rights and claims are hereby waived and released. The Organization may not be the purchaser for its own account at any such sale. The proceeds of any such liquidation shall be the net cash proceeds thereof, after deducting all expenses thereof.

(d) Without notice, to pledge, re-pledge, hypothecate, or re-hypothecate, any or all of the Collateral (separately or in common with other securities or any other property) to secure indebtedness of the Organization in any amount (whether larger or smaller than the Indebtedness) and without retaining a like amount of securities in the Organization's possession and control and to lend to itself or others, any or all of the Collateral.

Whenever any of the Collateral shall be applied to the payment of the Indebtedness, the principal amount of the Note shall be deemed paid and satisfied to the extent so applied.

VI. Right to Receive Preferred Stock

The Organization will issue, and the undersigned will accept, with respect to any payment (as distinguished from a reduction under Paragraph V(b) or V(c) (ii), return under Paragraph VIII or withdrawal under Paragraph IX), of all or part of the Indebtedness (whether pursuant to Paragraph V(c) or VII hereof) shares of Series Four Preferred Stock of the Organization (the "Preferred Stock")

at a price per share of $10,000 and at an aggregate price equal to such payment of all or part of the Indebtedness. It is expressly understood, however, that the right of the Organization to liquidate the Collateral and apply the proceeds of such liquidation in payment in whole or in part of the Indebtedness, as provided for in Paragraph V(c), or to pledge, re-pledge, hypothecate, re-hypothecate or lend any or all of the Collateral, as provided for in Paragraph V(d), shall not be affected in any way by any inability or failure to issue such Preferred Stock or any delay in the issuance of the same. Immediately upon such payment and until the issuance to the undersigned of such Preferred Stock, the undersigned shall have the rights of a holder of such Preferred Stock.

VII. Payment of Indebtedness

The undersigned shall have the right at any time and from time to time to pay the whole or any part of the Indebtedness and to receive therefor Preferred Stock in accordance with Paragraph VI hereof.

VIII. Return of Note

(a) Subject to the provisions of the Capital Agreement, dated as of July 2, 1973, among the Organization, Walston & Co., and the undersigned (the "Capital Agreement"), the Organization may, at the end of any calendar month, return the Note and the Collateral therefor to the undersigned or reduce the Indebtedness, after giving the undersigned notice thereof, specifying in such notice the date such return or reduction is to be made, which date shall not be earlier than one calendar month after the end of the month during which such notice is given, unless the Organization and the undersigned shall agree to an earlier date.

(b) No such return or reduction shall be made without the prior written approval of the Exchange nor shall any withdrawal be made under Paragraph IX, until after written notice thereof has been given to the Exchange and any similar institution with which the Organization has qualified for privileges the maintenance of which requires such notice.

(c) The undersigned agrees that if the Note is so returned or the Indebtedness is so reduced, or if the Note is withdrawn or reduced under Paragraph IX, and all or any part of the Collateral is returned

or withdrawn, and if, immediately after such return, reduction or withdrawal (i) the aggregate indebtedness of the Organization would exceed 1200 percentum of its Net Capital as those terms are defined in the rules of the Exchange in effect at such time or such lesser percentum as may be applicable to the Organization from time to time by the Exchange or a governmental agency or body having appropriate authority or (ii) its Net Capital would be less than the minimum dollar amount required by the rules of the Exchange in effect at such time or such greater dollar amount as may be made applicable to the Organization by a governmental agency or body having appropriate authority (the Net Capital necessary to enable the Organization to comply with such 1200 or lesser percentum and such minimum dollar amount or such greater dollar amount is hereinafter referred to as the "Applicable Minimum Capital") (whether or not the undersigned had any knowledge or notice of such fact at the time of any such return, reduction or withdrawal), the undersigned will promptly upon written notice by the Organization execute and deliver to the Organization a note identical to and having a principal amount equal to the Note so returned or withdrawn (or in the case of a reduction, in a principal amount equal to the amount of such reduction) if the Organization's Net Capital was less than the Applicable Minimum Capital immediately prior to such return, withdrawal or reduction (and if the Organization's Net Capital was less than the Applicable Minimum Capital immediately after but not immediately prior to such return, withdrawal or reduction having a principal amount equal to the difference between the Applicable Minimum Capital immediately after such return, withdrawal or reduction and the Organization's Net Capital immediately after such return, withdrawal or reduction), and secure such note on the same terms as in this Agreement provided with collateral having a Capital Requirements Value at the time of the delivery at least equal to the face amount of the note required to be executed and delivered pursuant to this subparagraph (c).

IX. Withdrawal of Note

So long as the Capital Requirements Value of the Collateral is not less than the Indebtedness the undersigned shall have the right, subject to the provisions of the Capital Agreement and the conditions hereof and provided there has been no prior demand by the Organization for payment of the Note, to withdraw the Note and the Collateral on

June 30, 1983 (the "Fixed Withdrawal Date"). The Organization's obligation to return the Note and Collateral shall be suspended for any period of time during which, but only to the extent that, after giving effect to such return (together with (a) the return of any Secured Demand Note, other than the Note and any other Secured Demand Note creating indebtedness subordinated in right of payment to the Organization's obligations under this Agreement, and the collateral therefor held by the Organization and returnable at or prior to the return of the Note and the Collateral or such portion thereof, and (b) the payment of any other obligation of the Organization, except any obligation subordinated in right of payment to the Organization's obligations under this Agreement, payable at or prior to the return of the Note and the Collateral or such portion thereof) its Net Capital would fail to equal or exceed the Applicable Minimum Capital in effect at the time, and during such time the Organization shall as promptly as consistent with the protection of its customers reduce its business to a condition which will permit the withdrawal of the Note and all Collateral (together with (a) the return of any Secured Demand Note, other than the Note and any other Secured Demand Note creating indebtedness subordinated in right of payment to the Organization's obligations under this Agreement, and the collateral therefor held by the Organization and returnable at or prior to the return of the Note and the Collateral or such portion thereof, and (b) the payment of any other obligation of the Organization, except any obligation subordinated in right of payment to the Organization's obligations under this Agreement, payable at or prior to the return of the Note and the Collateral or such portion thereof without causing the Organization's Net Capital to be less than its Applicable Minimum Capital at which time the Organization shall return the Note and the Collateral on not less than 5 days prior written notice to the Exchange. Notwithstanding the foregoing, if after giving effect to such withdrawal, the Organization's Net Capital would be less than the Applicable Minimum Capital, but without giving such effect is greater than the Applicable Minimum Capital, the undersigned shall be entitled to withdraw the Note and the Collateral provided that he concurrently executes and delivers to the Organization a new note identical to the Note except that it shall have a principal amount equal to the difference between the Applicable Minimum Capital and the Organization's Net Capital after giving effect to such withdrawal, and secures such note on the same terms as in this Agreement provided with collateral having a Capital Requirements Value at

the time of the delivery at least equal to the face amount of the note required to be executed and delivered pursuant to this paragraph. If pursuant to the terms hereof, the Organization's obligation to return the Note or the Collateral is suspended, the parties hereto recognize and agree that the Organization may be summarily suspended, by the Exchange. The Organization agrees that, if its obligation to return the Note and the Collateral is ever suspended for a period of six months, it will forthwith take whatever steps are necessary to effect a rapid and orderly complete liquidation of its business. Anything in this Agreement to the contrary notwithstanding, any right of the undersigned to withdraw the Note and the Collateral (or any portion thereof) pursuant to this Paragraph IX or to obtain the return or reduction of the same after notice given by the Organization pursuant to Paragraph VIII and the right of the undersigned to receive payments under Paragraph II is fully and irrevocably subordinate to and subject to the prior payment or provision for payment in full of all claims of all present and future creditors of the Organization arising out of any matter occurring prior to any withdrawal, return or reduction under Paragraph IX or VIII or payment under Paragraph II, and shall rank *pari passu* with the Organization's Series Four Preferred Stock. In the event of the appointment of a receiver or trustee of the Organization or in the event of its insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, its bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or other marshalling of assets and liabilities of the Organization the undersigned shall not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of the Organization until all claims of all other present and future creditors of the Organization, whose claims are senior hereto, have been fully satisfied or adequate provision has been made therefor. Provision shall be deemed to have been made for payment in full of all senior claims if the assets of the Organization available to pay the same shall be adequate in amount to satisfy all such senior claims fully, regardless of whether any assets are in any manner set aside for that purpose.

X. Return of Collateral

If the Indebtedness is reduced, pursuant to Paragraph IX, Paragraph VIII(a) or Paragraph VII hereof, the Organization shall en-

dorse the Note as discharged and satisfied to the extent of such reduction and shall return to the undersigned such part, if any, of the Collateral therefor if the Capital Requirements Value of the remaining Collateral is not less than the Indebtedness as so reduced.

XI. Non-Liability of Exchange

The Note is not being made and this Agreement is not being entered into in reliance upon the standing of the Organization as a member organization of the Exchange or upon the Exchange's surveillance of the Organization's financial position or its compliance with the constitution, rules and practices of the Exchange. The undersigned has made such investigation of the Organization and its officers, directors and stockholders as the undersigned deems necessary and appropriate under the circumstances. The undersigned is not relying upon the Exchange to provide, or cause to be provided, any information concerning or relating to the Organization and agrees that the Exchange has no responsibility to disclose, or cause to be disclosed, to the undersigned any information concerning or relating to the Organization which it may now, or at any future time, have. The undersigned agrees that neither the Exchange, its Special Trust Fund, nor any director, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to the undersigned with respect to the undersigned's capital contribution or the repayment thereof or of any interest thereon.

XII. Miscellaneous Provisions

(a) *Warranties of the Undersigned.* The undersigned hereby warrants that it has duly executed the Note, that it has duly delivered the Note to the Organization and upon such delivery the Organization acquired good title thereto, that the Note is the valid and binding obligation of the undersigned enforceable by the Organization in accordance with its terms; that the undersigned has duly and validly pledged with the Organization the Securities described in Schedule A annexed to the Note; and that the Organization as pledgee of the Collateral has the rights with respect thereto which are conferred upon it by this Agreement. Each such representation and warranty shall survive the execution and delivery of the Note and the pledge of the Securities.

The undersigned represents that the Securities may be publicly offered and sold without registration under the Securities Act of 1933

as amended and that the sale and transfer of such Securities is not restricted by that Act nor is it restricted by any other law, agreement or in any other manner.

(b) *Organization as Pledgee of the Collateral.* The Collateral shall be held by the Organization, as pledgee, in accordance with the terms hereof, to assure the faithful performance by the undersigned of his obligations under the Note, in an account in the name of the undersigned, to be designated his "Secured Note Collateral Account". Subject to the prior rights of the Organization as pledgee, title to all Collateral shall remain in the undersigned until such Collateral is applied to the payment of the Indebtedness. All of the right and interest of the Organization in the Collateral shall terminate upon payment in full of all Indebtedness.

(c) *Notices.* Any notice required or permitted to be given under this Agreement shall be sufficiently given if in writing delivered to or sent by registered mail or certified mail (or, in the case of the written notice called for in the first paragraph of Paragraph V(c), by telegram) to the appropriate party at the address set forth in this Agreement, or at any such other address as such party may from time to time specify for the purpose in a notice similarly given.

(d) *Governing Law.* The Agreement shall be deemed to have been made under, and shall be governed by, the laws of the State of New York in all respects including matters of construction, validity and performance.

(e) *Definition of Organization.* The term "Organization" as used in this Agreement shall mean duPont Glore Forgan Incorporated and its successors and assigns.

(f) *On Whom Binding.* This Agreement shall be binding upon the undersigned, his heirs, executors, administrators, successors and assigns.

(g) *Effective Date.* This Agreement shall be effective from the date hereof. This Agreement shall not be modified or amended without the prior written approval of the Exchange.

(h) *Capital Agreement.* This Agreement is entered into pursuant and is subject to the provisions of the Capital Agreement.

(i) *Supersedeas.* This Agreement supersedes, amends in its entirety and replaces the Secured Demand Note Collateral Agreement dated March 29, 1973 between the Organization and H. R. Perot and the Secured Demand Note issued pursuant thereto.

Kindly indicate your acceptance of the foregoing by signing the two copies hereof in the space indicated and returning one to the undersigned, thereby constituting the foregoing an agreement among ourselves.

H. R. Perot

1300 EDS Center
Exchange Park
Dallas, Texas 75235

ACCEPTED AND CONFIRMED:

DUPONT GLORE FORGAN INCORPORATED

By ----------

ANNEX I
to Exhibit C to the
Capital Agreement

SECURED DEMAND NOTE
duPONT GLORE FORGAN INCORPORATED

$5,200,000 July 2, 1973

FOR VALUE RECEIVED, the undersigned promises to pay to duPont Glore Forgan Incorporated (the "Organization") at its principal office in New York City (where presentment and demand for payment shall be made), without interest, the sum of Five Million Two Hundred Thousand Dollars ($5,200,000) on demand.

This Note is secured at its date by the pledge of the securities and cash described in Schedule A annexed hereto. The undersigned agrees that whenever the value of the property, determined in accordance with the capital requirements rules and regulations of the New York Stock Exchange, Inc. (the "Exchange") applicable to the Organization at the time of such valuation, securing this Note is less than the unpaid balance of this Note, the Organization shall exercise the rights set forth in Paragraph V(c) of the Secured Demand Note Collateral Agreement (the "Collateral Agreement") of even date between me and the Organization without first making a demand for payment hereof.

This Note and the securities and cash from time to time pledged to secure it are subject in all respects to the provisions of the Collateral Agreement, a copy of which may be examined at the principal office of the Organization.

The Organization, by acceptance hereof, agrees, for itself, its representatives, successors and assigns (1) that neither I nor my heirs, executors, administrators or assigns shall be personally liable on this Note, it being intended that my obligation to pay the principal amount of this Note is included for the sole purpose of establishing the existence of the indebtedness represented hereby, and (2) that in the event of default the Organization and any such successor or assign, shall look for payment solely to the security of the property then pledged to secure the same, and will not make claim or institute any action or proceeding against me, my heirs, executors, administrators or assigns for the payment of this Note (or for any deficiency remaining after application of

the property pledged to secure this Note, or otherwise); provided, however, that nothing herein contained shall be construed to release or impair the indebtedness evidenced by this Note, or of the lien upon the property pledged to secure it, or preclude the application of said pledged property to the payment hereof in accordance with the provisions of the Collateral Agreement.

The Organization further agrees that it will make a demand for payment hereof only after it determines in good faith that an event of financial restriction has occurred; provided, however, that no failure to make such a determination in good faith shall affect the effectiveness of a demand, or give rise to any claim which is superior to my claim under the Collateral Agreement for the withdrawal, return or reduction of this Note.

The term "event of financial restriction" shall mean for the purposes hereof any of the following events:

(a) Whenever additional cash is required by the Organization to continue its current operations;

(b) Whenever the Organization requires additional net capital under the then applicable capital requirements rules and regulations of the New York Stock Exchange, Inc.; or

(c) The appointment of a receiver or trustee of the Organization or any insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, its bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to the bankruptcy laws, or any other marshalling of the assets and liabilities of the Organization.

H. R. Perot

SCHEDULE A
to Annex I to
Exhibit C to the
Capital Agreement

SECURED DEMAND NOTE
duPONT GLORE FORGAN I. ORPORATED

Cash Pledged:

$----------

Securities Pledged:

Stocks:

Number of Shares Description

Bonds:

Principal Amount Description

EXHIBIT D
to the
Capital Agreement

WALSTON & CO., INC.

SENIOR SUBORDINATED DEBENTURE DUE JUNE 30, 1983

$---------- Principal Amount ----------, 19--

1. WALSTON & Co., INC., a Delaware corporation ("Walston"), promises to pay to duPONT GLORE FORGAN INCORPORATED ("DGF") on June 30, 1983 (the "Fixed Payment Date"), at the principal office of Walston, $---------- and interest from the date hereof payable on the first day of each month commencing with the first month after the date hereof and upon payment in full on the outstanding principal amount hereof at an annual rate equal to the rate of one percent over the prime commercial rate prevailing on the fifteenth day of the preceding month at Bank of America National Trust and Savings Association in San Francisco, California. The obligation of Walston to make any principal payment hereon shall be suspended for any period of time during which after giving effect to such payment (together with (a) the payment of any other obligation of Walston payable at or prior to the payment hereof and (b) return of any secured demand note and the collateral therefor held by Walston and returnable at or prior to the payment hereof): (i) the Aggregate Indebtedness of Walston would exceed 1200 per centum of its Net Capital as those terms are defined in the rules of the New York Stock Exchange, Inc. (the "Exchange") in effect at the time payment is to be made or such lesser per centum as may be made applicable to Walston from time to time by the Exchange or a governmental agency or self-regulatory body having appropriate authority or (ii) the Net Capital of Walston is less than the minimum dollar amount required by the rules of the Exchange in effect at such time or such greater dollar amount as may be made applicable to Walston by a governmental agency or self-regulatory body having appropriate authority (the Net Capital necessary to enable Walston to comply with such 1200 or lesser per centum and such minimum dollar amount or such greater dollar amount is hereinafter referred to as the "Applicable Minimum Capital"), and during any

such suspension Walston shall, as promptly as consistent with the protection of its customers, reduce its business to a condition whereby the principal amount of this debenture with accrued interest thereon could be paid (together with (a) the payment of any other obligation of Walston payable at or prior to the payment hereof and (b) the return of any secured demand note and the collateral therefor held by Walston and returnable at or prior to the payment hereof) without Walston's Net Capital being below the Applicable Minimum Capital, at which time Walston shall repay the principal amount hereof plus accrued interest on not less than 5 days' prior written notice to the Exchange. The first day at which, under this paragraph Walston has an obligation to pay the principal hereof, is hereinafter referred to as the maturity date. If pursuant to the terms hereof Walston's obligation to pay the principal amount hereof is suspended, DGF and Walston recognize and agree that Walston may be summarily suspended by the Exchange. Walston agrees that, if its obligation to pay the principal amount hereof is ever suspended for a period of six months, it will promptly take whatever steps are necessary to effect a rapid and orderly complete liquidation of its business.

2. DGF, by accepting this debenture, irrevocably agrees that the obligations of Walston under this debenture with respect to the payment of principal and interest are and shall be subordinate in right of payment and subject to the prior payment or provision for payment in full of all claims of all other present and future creditors of Walston whose claims are not similarly subordinated (claims hereunder shall rank *pari passu* with claims similarly subordinated), arising out of any matter occurring prior to the maturity date of this debenture. DGF's claims hereunder are subordinated to and rank junior to indebtedness to commercial banks but are similarly subordinated and rank *pari passu* with the claims of Charleston Investment Company as holder of Walston's Senior Subordinated Notes, due June 30, 1982, and are senior to all subordinated indebtedness of Walston which is junior to such Senior Subordinated Notes. In the event of the appointment of a receiver or trustee of Walston or in the event of its insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 ("SIPA") or otherwise, its bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws,

or any other marshalling of the assets and liabilities of Walston, DGF shall not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of Walston until all claims of all other present and future creditors of Walston whose claims are senior hereto have been fully satisfied or provisions have been made therefor.

3. Payment of all or any part of the principal amount of this debenture prior to the maturity date may be made by Walston only upon receipt of the prior written approval of the Exchange. If payment is made of all or any part of the principal of this debenture on or prior to the maturity date and if immediately after any such payment Walston's Net Capital is less than the Applicable Minimum Capital, DGF agrees irrevocably (whether or not DGF had any knowledge or notice of such fact at the time of any such payment) upon written notice by Walston to repay to Walston, its successors or assigns, the sum so paid if Walston's Net Capital was less than the Applicable Minimum Capital immediately prior to such payment (and if Walston's Net Capital was less than the Applicable Minimum Capital immediately after but not immediately prior to such payment, a sum equal to the difference between the Applicable Minimum Capital immediately after such payment and the Net Capital of Walston immediately after such payment), to be held by Walston pursuant to the provisions hereof as if such payment had never been made; provided, however, that any suit for the recovery of any such payment must be commenced within two years of the date of such payment.

4. The unpaid principal amount of this debenture shall forthwith mature, together with fixed interest accrued thereon, in the event of any receivership, insolvency, liquidation pursuant to SIPA or otherwise, bankruptcy, assignment for benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of Walston, but payment of the same shall remain subordinate as hereinabove set forth. For the purposes of this debenture, a liquidation of Walston, if not actually commenced earlier, shall be deemed to have commenced at the time it shall be deemed to have commenced under any instrument or agreement creating or evidencing indebtedness of Walston issued pursuant to Rule 325.20(4)(A)(ii) of the Exchange or any successor rule. Default in the payment of interest shall not accelerate the maturity of this debenture,

and payment of this debenture shall remain subordinate as hereinabove set forth.

5. DGF by accepting this debenture irrevocably agrees that its purchase of this debenture is not being made in reliance upon the standing of Walston as a member organization of the Exchange or upon the Exchange's surveillance of Walston's financial position or its compliance with the constitution, rules and practices of the Exchange. DGF has made such investigation of Walston and its officers, directors and stockholders as DGF deems necessary and appropriate under the circumstances. DGF is not relying upon the Exchange to provide any information concerning or relating to Walston and agrees that the Exchange has no responsibility to disclose to DGF any information concerning or relating to Walston which it may now, or at any future time, have. DGF agrees that neither the Exchange, its Special Trust Fund, nor any director, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to DGF with respect to this instrument or the repayment thereof or any interest thereon.

6. This debenture may not be transferred, sold, assigned, pledged or otherwise encumbered or otherwise disposed of, and no lien, charge or other encumbrance may be created or permitted to be created thereon without the prior written consent of the Exchange. Subject to the foregoing, this debenture is transferable by the registered holder hereof, in person or by duly authorized attorney, on the books of Walston to be kept for that purpose at the principal place of business of Walston, upon surrender and cancellation of this debenture and on presentation of a duly executed written instrument of transfer to any person whomsoever satisfactory to Walston and to the Exchange. Walston may deem and treat the person in whose name this debenture is registered as the absolute owner hereof for the purpose of such person receiving payment of or on account of the principal hereof and interest thereon, and for all other purposes, and shall not be affected by any notice to the contrary.

7. The provisions of this debenture shall be binding upon Walston and DGF and their respective successors and assigns.

8. Any controversy arising out of or relating to this debenture shall be submitted to and settled by arbitration pursuant to the Con-

stitution and Rules of the Exchange. DGF and Walston shall be conclusively bound by such arbitration.

9. This debenture is issued pursuant and is subject to the provisions of the Capital Agreement, dated as of July 2, 1973, between DGF and Walston. No evidence or agreement affecting this indebtedness will hereafter be executed without the prior written consent of the Exchange.

10. This debenture shall be deemed to have been issued under, and shall be governed by, the laws of the State of New York in all respects.

WALSTON & Co., INC.

By ----------

[CONFORMED COPY]

EXHIBIT 4
to
Master Agreement

AGREEMENT

FOR ELECTRONIC DATA PROCESSING SUPPLIES AND SERVICES

Dated July 2, 1973

AGREEMENT OF AMENDMENT dated July 2, 1973 among DUPONT GLORE FORGAN INCORPORATED, a Delaware corporation ("Company"), WALSTON & Co., INC., a Delaware corporation ("Walston"), E. D. SYSTEMS CORPORATION, a Texas corporation ("EDS") and ELECTRONIC DATA SYSTEMS CORPORATION, a Texas corporation ("EDSC"),

WITNESSETH:

WHEREAS, EDSC and Company entered into an electronic data processing ("EDP") agreement dated as of July 3, 1970, as subsequently modified and amended (the "Prior Company Contract"); and

WHEREAS, EDS entered into an EDP agreement with Walston dated July 5, 1972 (the "Prior Walston Contract" and, together with the Prior Company Contract, the "Prior Contracts"); and

WHEREAS, Company and Walston have entered into a clearing agreement and other agreements as a result of which Walston will become an introducing broker with respect to customer securities transactions and will therefore no longer require EDP services and Walston has therefore requested EDS to amend the Prior Walston Contract; and

WHEREAS, Company has requested EDSC to amend the Prior Company Contract; and

WHEREAS, Company and Walston each represents to EDS and EDSC that they are and have been incurring severe operating losses which, with respect to each threatens its ability to continue in business; and

WHEREAS, it is a condition of the clearing agreement between Company and Walston that the Prior Contracts be amended; and

WHEREAS, EDS and EDSC have consented, in the circumstances, to amend the Prior Contracts, provided that Company and Walston enter into this Agreement of Amendment with EDS;

NOW, THEREFORE, the Company, Walston, EDSC and EDS agree that subject to the provisions of paragraph 3, the Prior Contracts are amended in their entirety to provide as follows:

1. *Agreement.* During the term of this Agreement EDS will supply, and Company will purchase, those of Company's requirements for EDP, telecommunication and data communication services and supplies as are herein described, all on the terms and conditions herein specified.

2. *Term.* The term of this Agreement shall commence as of July 2, 1973 (the "Effective Date"), and shall terminate on the tenth anniversary of the Effective Date (the "Expiration Date") unless earlier terminated in accordance with the terms of this Agreement. The date one day prior to the Effective Date is herein called the "Commencement Date".

3. *Prior Contracts.* For as long as EDS is rendering services under this agreement, the Prior Contracts, and the obligations, burdens, benefits and duties of the respective parties thereunder (except as provided on Schedule A hereto with respect to certain billing matters thereunder for services performed for Company and Walston prior to the Effective Date) shall be suspended. In the event this agreement is terminated at any time prior to the Expiration Date, for any reason other than the default of EDS hereunder (a "Premature Termination"), the Prior Company Contract shall immediately thereupon be in full force and effect as though this Agreement of Amendment had never existed. In the event of a Premature Termination, and provided that Walston is not thereafter obligated to Company to make continued payments pursuant to the Clearing and Related Services Agreement entered into between Walston and Company as of July 2, 1973, for future clearing services, the Prior Walston Contract shall immediately thereupon be in full force and effect as though this Agreement of Amendment had never existed with the following exceptions:

(a) Walston may elect, at its option, by giving notice in writing to EDS, to terminate the Prior Walston Contract and shall

thereupon pay EDS the sum of $200,000 per month from the date of Premature Termination to the expiration date specified in the Prior Walston Contract;

(b) If Walston elects to have EDS provide EDP services to Walston using the Systems (as therein defined) in use in the period preceding the Effective Date rather than those in use at the time of a Premature Termination, EDS shall have 180 days to effect the Systems conversion required thereby, and shall not be required to make any such conversion if it would require the acquisition or leasing of additional computers or other hardware; and

(c) With respect to the development and installation of CBS (as therein defined), the following terms shall apply:

(1) within 30 days after a Premature Termination Walston shall direct EDS whether to proceed with the design and development of CBS.

(2) if Walston directs EDS to so proceed, Walston will at the same time inform EDS in writing with respect to the performance specifications for CBS which Walston desires. Walston and EDS will then agree as to the timetable for the design, development and installation of CBS.

(3) EDS will design, develop and install CBS for the prices provided in the Prior Walston Contract, unless as a result of developments in the state of the art with respect to Systems used generally for retail brokerage firms at the time, the costs to EDS of such design, development and/or installation will be higher than those budgeted by EDS for such design, development and/or installation at the time of entering into the Prior Walston Contract. If such costs would be higher on account of the matters aforesaid, EDS and Walston will negotiate with respect to EDS' charges for such design, development and installation. If the parties are unable to agree on the price to be paid by Walston for such design, development and/or installation, the price shall be EDS' actual costs therefor plus a profit on such costs equal to the rate of profit achieved generally by EDSC, as shown in EDSC's Annual Re-

port for the fiscal year ended immediately prior to the date of Premature Termination. In connection therewith, EDS will give full credit for all sums paid by Walston pursuant to the Prior Walston Contract on account of design and development of CBS to the extent that any Systems or parts thereof designed or developed by EDS prior to the Effective Date are then useable in CBS.

(4) Systems Operation under CBS shall be at the prices provided in the Prior Walston Contract.

4. *Reimbursement to EDS for Termination Costs.* Company agrees to pay EDS $2.5 million on account of its costs, including general and administrative costs, in connection with ceasing to render services under the Prior Contracts and in connection with Systems conversion and other work required by virtue of the consolidation of EDP operations with Company and Walston including relocation of the Walston data center and conversion of space thereafter at 77 Water Street, New York City, from a data center to office space. Company shall pay EDS the aforesaid amount in monthly increments commencing July, 1973, of $100,000 per month. EDS shall use its reasonable best efforts to minimize the costs described herein. If EDS' actual costs, as aforesaid, are less than $2.5 million, EDS shall promptly notify Company, in writing, and any payments remaining to be made by Company hereunder in excess of EDS' actual costs shall terminate. If payments hereunder have already been made by Company to EDS in excess of EDS' actual costs, as aforesaid, EDS shall so notify Company, in writing, and the excess amount paid to EDS by Company shall be reimbursed to Company within six (6) months from the date of EDS' ascertaining that any such excess payments have been made. Company's chief financial officer shall have reasonable rights to inspect EDS' books and records with respect to its costs incurred hereunder.

5. *Systems.* (a) As used herein, the terms "System" and "Systems" shall mean a computer program or several connected interactive programs with supporting documentation, including input and output formats, program listings, flow charts, narrative descriptions and operating instructions.

(b) The term "Company Systems" means both the completed Systems of Company as they existed as of August 1, 1970, and the com-

pleted Systems of Walston as they existed as of July 5, 1972 and any other Systems identified as having comprised the Walston Systems pursuant to the prior Walston Contract.

(c) Company's Systems will be and remain its and Walston's respective property. EDS has put on tape all existing programs and will continue to preserve all existing documentation for Company Systems, and shall deliver the same to Company and/or Walston, as the case may be, promptly upon termination (for whatever cause) of this Agreement.

(d) The EDS System (as defined in Paragraph 7(a)) shall be and remain the property of EDS.

(e) If Company shall request EDS to make a modification or improvement to Company Systems, or any EDS System used in Systems Operation (as defined in Paragraph 8(a)), or to engage in any Systems development, EDS shall advise Company whether that modification, improvement or development is major or routine, and if major, EDS shall also advise Company of the estimated amount of its separate charge therefor. EDS shall not make any major Systems modification, improvement or development without the prior written approval of Company. The actual charge to Company for making any major modification, improvement or Systems development shall be based upon EDS' then prevailing rates for personnel, machine time and any other supplies used in performing the requested modification, improvement or Systems development. Routine modifications and improvements of Company Systems and routine Systems development reasonably requested by Company shall be made by EDS without charge to Company.

6. *Data Files.* Company's and/or Walston's data files and the data contained therein shall be and remain their property and be returned to them by EDS upon the Expiration Date of this Agreement or on such earlier date, with respect to any particular data files and data, that the same are no longer required by EDS for Systems Operation. Company's and Walston's data shall not be utilized by EDS for any purpose other than that of rendering service to Company under this Agreement, nor, except in accordance with the provisions of Paragraph 26 hereof, shall Company's or Walston's data or any part

thereof be disclosed, sold, assigned, leased or otherwise disposed of to third parties by EDS or commercially exploited by or on behalf of EDS, its employees or agents.

7. *The EDS System.* (a) "EDS System" as used herein includes any System, or part thereof, or modification or improvement thereof (including any major modification or improvement of Company Systems) which is or has been designed, developed, modified or improved by EDS.

(b) Not less than twelve (12) months prior to the Expiration Date, Company shall notify EDS in writing whether or not it desires, after the Expiration Date, to use the EDS System. Except as hereinafter specified in subparagraph 7(c), and subject to entering into the agreement therein provided for, after the Expiration Date Company shall be entiltled to the use of the EDS System, without cost, unless EDS and Company, in connection with any Systems development undertaken by EDS at Company's request, shall otherwise provide with respect to Systems not now part of the EDS System. In addition, EDS will provide to Company, if Company so elects, (i) training for Systems maintenance and operations of Company personnel during the twelve-month period prior to the Expiration Date, and, at Company's option, for thirty (30) day increments after the Expiration Date, up to six (6) months; (ii) such other services in connection with conversion of the EDS System from operation by EDS to operation by Company as Company shall reasonably request; and (iii) such computer and data processing hardware as Company shall require for the operations of either the Company Systems or the EDS Systems; provided, however, Company shall include in its notice to EDS, a specification of any such hardware. EDS shall receive compensation for furnishing the services and hardware referred to in clauses (i) and (ii) above based upon its then prevailing rates for personnel, machine time and other supplies and shall be paid for any hardware furnished to Company pursuant to clause (iii) above based upon the fair market value of any such hardware.

(c) In order to preserve and protect the confidentiality of the EDS Systems, if Company shall elect to operate such Systems after the Expiration Date, Company and EDS shall enter into an agreement, in

form and substance reasonably satisfactory to EDS and Company, containing such covenants and conditions as are necessary or reasonably required by the purpose of the agreement, including, *inter alia*:

(1) The EDS System shall not be operated directly or indirectly by persons other than Company's employees; provided, however, the EDS System may be operated, if Company shall request, by EDS, and EDS agrees, at the request of Company, to render service bureau and Systems engineering services at EDS' regular rates as then in effect.

(2) Except with the prior written consent of EDS, only Company work (including, however, any data processing for customers of Company for whom Company provides clearing services) shall be processed on the EDS Systems.

(3) At no time may the EDS System or any of the various components thereof be disclosed to third parties (other than employees of the Company and except as provided under Paragraph 26 hereof), sold or assigned (except as provided under Paragraph 33 hereof), leased or otherwise disposed of or commercially exploited by or on behalf of Company, its employees or agents; provided, however, nothing herein shall be deemed to preclude Company from discussing the EDS System with other users of the EDS System.

(4) Violation of any provision of the agreement referred to in this subparagraph 7(c) shall abrogate Company's right to use the EDS Systems and upon written demand by EDS, Company shall immediately return said EDS Systems to EDS.

8. *Systems Operation.* (a) Commencing on the Effective Date, EDS will provide to Company the following services and supplies (herein referred to as "Systems Operation"):

(1) Perform EDP operations as in effect for the Company on the Commencement Date. Furnish such information and reports (including, without limitation, printouts, correction of errors caused by EDS employees, runs, statements and confirmations) on the same time schedule and in the same format (unless EDS and Company otherwise agree in writing) as Company had actually been receiving such information and reports in the three (3)

months immediately preceding the Effective Date, together with other periodic runs, if applicable.

(2) In connection with operating Company's and EDS' Systems, furnish operators and systems engineers.

(3) Perform, at the expense of EDS, all obligations of Company and/or Walston under the following categories of contracts between Company and/or Walston and others on the Effective Date: leases of computer hardware equipment, electronic accounting equipment, keypunch machines, data processing associated communications lines and terminals, and data processing related statistical services contracts; provided, however, in order to facilitate EDS in Systems Operation and to better enable EDS to maintain Systems and the availability and usefulness of the data output therefrom, EDS may request Company and/or Walston to cause the termination of any such leases or contracts without cost or other adverse consequence to Company and/or Walston. Company and/or Walston agree to give such notices of termination of any of the contracts referred to in this subparagraph (3) as EDS may request.

(4) Maintain Company's computer programs by accomplishing such ordinary day-to-day changes and corrections to such programs as may from time to time be required or reasonably requested by Company.

(5) Correct all programming, operator and other data processing errors, unless such errors are caused by or attributable to Company, its employees or agents and correct all data entry errors caused by EDS.

(6) Store and safeguard (under the retention schedule in effect at Walston on the Commencement Date until mutually agreed upon changes are made) magnetic tapes and disc packs of Company and/or Walston when in the possession or custody of EDS. In the event a different retention schedule is required by any regulatory body with jurisdiction over Company's business for such tapes or disc packs, or the data contained thereon or therein, EDS shall comply with such requirements; provided, however, if the costs to EDS of such compliance exceed the retention

costs on the Commencement Date, the base price payable under Paragraph 9(a) shall be adjusted by an amount equal to the increase in such retention costs.

(7) Maintain documentation of the programs developed or acquired by EDS, and basic instructions relative to preparation of input, operations and utilization of output of the EDS System.

(8) Supply Company with such keypunch or keytape or equivalent data entry services as are reasonably required by the services to be furnished by EDS to Company hereunder.

(9) Provide training for Company employees or temporary help to prepare input for, and use output from, Systems. The extent, scope, timing and coordination of such training will be jointly determined by Company and EDS.

(10) Provide Company with all EDP-related supplies, which include magnetic tapes, data processing cards, disc packs, data cells, ribbons and all EDP-related forms, but not including microfilm, microfiche or microfilm or microfiche services and equipment, to the extent provided on the Commencement Date to Company. Provide Company with microfilm and microfiche, and microfilm or microfiche equipment and services at the average monthly level provided to Company and Walston, in the aggregate, in the three months preceding the Commencement Date. At the request of Company, provide it with additional or alternative microfilm and microfiche and microfilm or microfiche equipment and services at EDS' then prevailing rates.

(11) Except as otherwise expressly provided herein, provide a level of service equal to that being provided for Company on the Commencement Date with respect to the services included in the base price of the Prior duPont Contract and without Systems development or improvement, except for the completion of the Systems listed on Schedule B hereto.

(b) In connection with Systems Operation, Company will, on a timely basis:

(1) Make available to EDS for its use, all of the EDP and EDP-related communications equipment either owned by Walston

or a subsidiary thereof (the "Equipment"), a schedule of which, together with the monthly depreciation recorded on Walston's books of account or that of its subsidiaries for each part of the Equipment, is attached hereto as Schedule C, and made a part hereof. From and after the Effective Date, EDS shall reimburse Company monthly for the amount of such depreciation for any part of the Equipment not fully depreciated. At such time as any part of the Equipment is fully depreciated on Walston's books of account, or that of its subsidiaries, EDS shall have the option (i) to purchase it for its then fair market value; (ii) to continue to use such Equipment and to pay Company a fair rental therefor; or (iii) to cease using such Equipment and return it to Walston or its subsidiary at any location which Walston or its subsidiary may direct in the Wall Street area of New York City. With respect to any Equipment prior to its purchase or lease by EDS and during its use by EDS, EDS shall maintain or cause the Equipment to be maintained in accordance with proper maintenance schedules, standards and procedures.

(2) Supply to EDS for processing, required source data and applicable control totals in the form reasonably required by EDS.

(3) Carefully inspect and review all reports prepared by EDS and reject all incorrect reports within five (5) working days after receipt thereof for daily reports, and within ten (10) working days after receipt thereof for monthly reports. Failure to so reject any report shall constitute acceptance thereof, except for errors which are not reasonably discoverable within the periods specified, provided Company uses due diligence with respect thereto, or errors which have not been discovered because of circumstances beyond Company's reasonable control. The failure of Company to reject any incorrect report within the time specified shall not relieve EDS of the obligation of subsequently correcting any such incorrect report. The correction of erroneous reports for which Company was not reasonably responsible shall be done at the expense of EDS; the correction of erroneous reports for which Company is reasonably responsible shall be done at Company's expense. The expense of correcting any erroneous reports due to circumstances beyond the control of either Company or EDS shall be borne equally by

both parties. Any such expense shall be based upon EDS' costs for personnel, supplies and machine time used in making such corrections.

(4) Cooperate with EDS in maintaining the clerical procedure manuals necessary for use by Company personnel.

(5) Cooperate with EDS in training Company personnel to prepare input for and to effectively utilize output from the Systems.

(6) Furnish space at 77 Water Street, New York City, 25 Broadway, New York City and 42 Broadway, New York City, and all services related thereto (*e.g.*, janitorial) and utilities, for offices, input and output equipment, EDP hardware and personnel, and furnish telephones and office-related duplicating services to the employees of EDS to assist Company and otherwise to perform Systems Operations. EDS shall reimburse Company monthly, as long as a data processing center is maintained for Systems Operation at 77 Water Street, New York City, $20,635 per month plus that proportion of the actual amount of expenses incurred by Walston after the Effective Date pursuant to escalation clauses in its lease for 77 Water Street which the total square footage of the seventh floor space bears to the total square footage of all space at 77 Water Street leased by Walston at the time of such escalation. At such time as a data processing center for Systems Operation is no longer maintained at 77 Water Street, New York City, Company need not provide EDS with any space or related services at 42 Broadway, and the EDS reimbursements referred to above shall terminate.

(7) Provide storage space for all backup data files required in Systems Operation, or as required by any regulatory authority with jurisdiction over Company's business.

(c) EDS shall provide for physical delivery of Company's data for processing, processed data, and data processing supplies, between any business office of Company and the EDP facilities employed by EDS, or between EDS facilities. Company shall pay EDS its charges therefor, except EDS shall make no charge for physical delivery of such data or supplies (i) between 77 Water Street, New York City, and any other office of Company in the Wall Street area other than branch sales offices, and the EDS data center, and (ii) for any physical

delivery costs incurred as a result of interruptions in service which are not caused by Company.

(d) EDS will, at Company's request, whenever changes in record keeping and periodic reporting requirements are adopted by any public or private regulatory authorities (including, without limitation, the Securities and Exchange Commission, Commodity Exchange Authority, state securities authorities, the New York Stock Exchange and other stock and commodity exchanges and the National Association of Securities Dealers, Inc.) having jurisdiction over Company or Walston or their businesses and personnel or of which either is a member, as promptly as practicable, revise or adopt the Systems as may be necessary or appropriate to yield the information required for such record keeping and/or reporting. With respect to extraordinary or "one of a kind" reporting requests of any such authorities, EDS shall, to the extent reasonably practicable, design or revise the Systems so as to facilitate timely compliance by Company with all forms of such reporting requirements. For any such revisions or adaptations or design of the Systems referred to in this Paragraph 8(d), other than those which EDS designates routine, Company shall pay EDS its charges therefor, which charges shall be based upon EDS' then prevailing rates for personnel, machine time and other required supplies. Any such revisions, adaptations or designs shall become part of the EDS Systems.

(e) Except as otherwise provided in Paragraphs 4, 5(e), 7(b), 8(a)(b), (10), 8(a), (3), 8(c), (d), 11, 12, 28 and 31 hereof, the charges specified in Paragraph 9 hereof shall cover all supplies and services to be furnished to Company by EDS under this Agreement.

9. *Payments to EDS.* Except where special charges for services are elsewhere provided herein, Company shall pay EDS for Systems Operation as follows:

(a) A base charge per month, commencing on the Effective Date, of $1,220,000.

(b) In addition to the amount paid each month pursuant to subparagraph (a) above, Company shall also pay to EDS a charge per Trade Transaction (hereinafter defined) of $3.75 per Trade Transaction for all Trade Transactions in excess of 2,400,000

Trade Transactions for each twelve months (measured from July 1 to the following June 30) of operation hereunder. For the purposes of this subparagraph 9(b), a Trade Transaction shall mean the sum of (i) total trades shown on the month-end summary of the Daily Commission—Firm Report (Report 603), plus (ii) the manually calculated total commodity trades as reported on a monthly summary of daily detail by Company's Commodity Operations Department or, as calculated by reference to such other reports or indices as EDS and Company shall mutually approve, both with respect to securities trades and commodities trades.

(c) Company shall pay EDS' reasonable out-of-pocket expenses, including, but not limited to, travel outside the New York area, incurred in the performance of this Agreement after the Effective Date. Company shall pay all reasonable and necessary costs and expenses of installing any EDP and telecommunications or related equipment requested by Company on Company's or Walston's premises under this Agreement, including, without limitation, the costs and expenses of moving such equipment from one Company location to another, from one Walston location to another or from a Company location to a Walston location or vice versa. EDS shall obtain Company's prior consent before incurring any out-of-pocket expenses or other costs and expenses reimbursable to it under this subparagraph.

(d) Company shall pay the reasonable charges of EDS for reruns necessitated by incorrect or incomplete data or erroneous instructions supplied to EDS by Company; provided, however, that reruns of reports which are, in the ordinary course of business, rerun more than once in order to check the accuracy thereof shall not be considered as being necessitated by incomplete or inaccurate data or erroneous instructions. Duplicate runs shall be made at Company's request and Company shall pay EDS' separate charges therefor, based upon EDS' then prevailing machine time rate per hour or part thereof.

(e) The monthly base price due under subparagraph (a) above, and the payment specified in Paragraph 4 hereof, are payable on the tenth day of the month to which the charges apply. Sums due under subparagraph (b) shall be invoiced monthly on the basis of

the Trade Transactions executed in the prior month, as follows: each month EDS shall invoice Company for all Trade Transactions executed in the prior month in excess of 200,000 Trade Transactions at the per Trade Transaction charge specified in subparagraph (b). As promptly as practicable following September 30 of each year, EDS shall refund to Company all payments made on account of invoices submitted for the prior three months for Trade Transactions in excess of 600,000, to the extent that in the prior three-month period the Company did not actually execute Trade Transactions in excess of 600,000. Similarly, as promptly as practicable after December 31 of each year, EDS shall refund to Company all payments made on account of Trade Transactions in excess of 1,200,000 Trade Transactions, to the extent that in the prior six-month period the Company did not actually execute Trade Transactions in excess of 1,200,000. A similar adjustment (based upon 1,800,000 Trade Transactions) shall be made as promptly as practicable after March 31 of each year for the preceding nine months and as promptly as practicable after June 30 of each year for the preceding twelve months, based upon any payments for Trade Transactions in excess of 2,400,000 Trade Transactions, to the extent that in the prior twelve-month period such excess Trade Transactions were not actually executed. Sums due under subparagraphs (c) through (d) above, are payable as invoiced.

10. *Release of Claims Under Prior Contracts.* With the exception of the matters referred to on Schedule A attached hereto, EDS and EDSC, respectively, acknowledge that Company and Walston have fully and faithfully complied with all obligations, covenants and conditions to be performed by them pursuant to the Prior Contracts. The Company and Walston, respectively, acknowledge that EDSC and EDS have fully and faithfully complied with all obligations, covenants and conditions to be performed by them pursuant to the Prior Contracts.

11. *Cost of Living Adjustment of Charges.* If, during the term of this Agreement, the Consumer Price Index for Urban Wage Earners and Clerical Workers, New York City Average, as published by The Bureau of Labor Statistics of the Department of Labor (or in the event the Bureau shall have stopped publishing such Index, any other comparable measure published by a mutually agreeable source) at any new

year (the "Current Index") is more than seven percent (7%) higher than such Consumer Price Index on July 1, 1973 (the "Base Index"), the prices specified in subparagraphs 9(a) and 9(b) to be paid by the Company to EDS shall be revised for the ensuing twelve (12) months by a percentage equal to one hundred percent (100%) of that part of the percentage increase in the Current Index over the Base Index which exceeds seven percent (7%).

12. *Devaluation.* In the event of a formal devaluation of the United States dollar, and if as a result thereof EDS is materially adversely affected in the costs to it of services and supplies necessary to perform Systems Operation, Company agrees to negotiate such good faith adjustment in the base price provided in Paragraph 9(a) as is equitable in the circumstances to compensate EDS for such increased costs of services and supplies; it being understood that the term "equitable in the circumstances" shall not result in any adjustment in the base price provided in paragraph 9(a) unless such devaluation could result in an increase in the gross revenues derived from Walston's business operations.

13. *Time of Payment.* All amounts becoming due from Company to EDS hereunder for which a time for payment is not specified hereunder shall be payable by Company within ten (10) days after receipt of invoice therefor from EDS.

14. *Assignment of Payments Due.* EDS may pledge or assign the sums of money due and to become due to it hereunder to any bank, lending agency or institution as collateral security, and Company agrees to recognize any such assignments when notice from EDS is received in writing by Company, provided that nothing in this paragraph shall release EDS from its obligations and liabilities under this Agreement and provided further that such assignment shall not in any way affect or prejudice any defense which the Company may have against such payment. Upon the receipt of such notice, Company may discharge its obligations to EDS by making such payment directly to the designated assignee.

15. *Right to Supervise.* EDS has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be

performed, all work to be performed by EDS hereunder, unless otherwise provided herein.

16. *Unauthorized Access and Assistance.* Company's personnel shall not operate the EDP equipment to be utilized by EDS hereunder and shall not enter any room where any such equipment may be located or assist EDS in any manner therein without the prior written approval of EDS. EDS personnel shall comply with Company's reasonable rules with respect to access to Company's offices and records including Company's rules relating to access to places where securities are located.

17. *Indemnification.* EDS and Company shall indemnify and hold harmless the other from any loss, damage, cost or expense which the other may sustain or incur by reason of or arising from any accident or injury to property, personnel or employees of the other occurring in the course of the performance of this Agreement. The parties hereto agree to maintain adequate insurance coverage against the risk each assumes hereby.

18. *Hiring of Employees.* During the period this Agreement is in effect and for a period of three (3) years thereafter, EDS and Company each agree to refrain from hiring any officer or employee then employed by the other, or a subsidiary or the parent of the other, except where the other shall have consented to such hiring.

19. *Protection of Data.* EDS shall establish and maintain reasonable safeguards against the destruction or loss of Company's and Walston's data in the possession of EDS, which safeguards shall at least meet the standards of safety maintained by Company.

20. *Limitation of Liability of EDS.* In the event EDS shall be liable to Company on account of its negligence in the performance of, or failure to perform, the services specified in this Agreement, or for any other reason relating to or arising out of the execution of this Agreement and the consummation of the transactions herein contemplated, (i) the amount of damages on account of all such acts or omissions which occur in any one month shall not exceed the amount of

monthly compensation payable under Paragraph 9(a) for such month, and (ii) the measure of damages shall not include any amounts for indirect, punitive or consequential damages or for damages which could have been avoided had Company verified the data furnished it by EDS before utilization thereof, provided that the foregoing limitations shall not be applicable to any negligence which constitutes EDS' unjustified non-performance of this Agreement. In connection with the conduct of any litigation with third parties relating to any liability of EDS to Company or to such third parties, EDS and Company shall each have rights (including the right to accept or reject settlement offers) which are appropriate to their respective potential responsibilities under the preceding sentence; provided that neither EDS nor Company shall make any settlement or other disposition of any such litigation prejudicial to the other without such other party's prior written consent.

21. *Waivers, etc.* No covenant, condition or undertaking contained in this Agreement may be waived except by the written agreement of EDS and Company. Forebearance or indulgence in any other form by either party in regard to any covenant, condition or undertaking to be kept or performed by the other party shall not constitute a waiver thereof, and, until complete satisfaction or performance of all such covenants, conditions and undertakings, the other party shall be entitled to invoke any remedy available under this Agreement or law, despite any such forebearance or indulgence.

22. *Termination Upon Bankruptcy, etc.* (a) EDS may terminate this Agreement at any time upon written notice to Company in the event of any of the following: if Company makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or if an order, judgment or decree is entered adjudicating Company bankrupt or insolvent and such order remains unstayed and in effect for more than thirty (30) days; or if Company petitions or applies to any tribunal (including the Securities Investors Protection Corporation) for the appointment of a trustee or receiver for all or any substantial part of the assets of Company, or commences any proceedings relating to Company under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in

effect; or if any such petition or application is filed, or any such proceedings are commenced, against Company and Company by any act indicates its approval thereof, consent thereto, or acquiescence therein; or if any order is entered appointing any such trustee or receiver, or adjudicating Company bankrupt or insolvent, or approving the petition in any such proceedings, and such order remains unstayed and in effect for more than thirty (30) days; provided, however, that EDS may not terminate this Agreement under the provision of this Paragraph 23(a) so long as Company's payments due EDS under this Agreement remain current.

(b) Company may terminate this Agreement at any time upon written notice to EDS in the event of any of the following: if EDS makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or if an order, judgment or decree is entered adjudicating EDS bankrupt or insolvent and such order remains unstayed and in effect for more than thirty (30) days; or if EDS petitions or applies to any tribunal for the appointment of a trustee or receiver of EDS, for all or any substantial part of the assets of EDS or commences any proceedings relating to EDS under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction whether now or hereafter in effect; or if any such petition or application is filed, or any such proceedings are commenced, against EDS and EDS by any act indicates its approval thereof, consent thereto, or trustee or receiver, or adjudicating EDS bankrupt or insolvent, or approving the petition in any such proceedings, and such order remains acquiescence therein; or if an order is entered appointing any such unstayed and in effect for more than thirty (30) days; provided, however, that Company may not terminate this Agreement under the provisions of this Paragraph 23(b) so long as EDS continues its performance under this Agreement.

23. *Termination upon Default.* If either party substantially shall fail to keep or perform any of the covenants, conditions or undertakings hereunder by it to be kept or performed, including the making of payments, the other party may, by sending to the party in default written notice, mailed by registered mail, return receipt requested, to the

principal office of the party in default, cancel and terminate this Agreement effective upon the expiration of thirty (30) days from the mailing of such notice; provided that, in the event the defaulting party substantially cures the default upon which such cancellation notice was given by the other party within such thirty (30) day period, this Agreement shall remain in full force and effect; provided, further, that if the default shall be the making of any payments due to EDS such default must be cured within five (5) days from the receipt of such notice; and provided, further, that Company shall, whether or not such notice of termination is sent by EDS, pay EDS interest at one percent (1%) above the prime commercial lending rate in New York City for any payment due to EDS which is not received by EDS on the due date.

24. *Approvals, Consents, etc.* Where agreement, approval, acceptance or consent by either party is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.

25. *Return of Company-Owned Equipment.* Promptly following the termination of this Agreement, EDS will return to Company at such place in the Wall Street area as Company may designate, in satisfactory working condition any Equipment furnished EDS for performance under this Agreement which EDS has not purchased.

26. *Confidentiality.* EDS and Company each agrees that all information communicated to it by the other, either before or after the Effective Date of this Agreement, shall be and was received in strict confidence, shall be used only for purposes of this Agreement, and that no such information shall be disclosed by the recipient party without the prior written consent of the other party. Company and EDS shall take all reasonable precautions to prevent the disclosure to outside parties of the terms of this Agreement, including, without limitation, any amounts paid or agreed to be paid under the terms and provisions hereof, except as may be necessary by reason of legal, accounting or regulatory or self-regulatory (such as the New York Stock Exchange, other exchanges and the National Association of Securities Dealers) requirements beyond the reasonable control of EDS or Company, as the case may be. EDS covenants that it will make no disclosure of any kind of any information which is the property of Company, including, with-

out limitation, customer lists, stockholders lists, noteholders lists, trading positions, salesmen lists and marketing techniques.

27. *Force Majeure.* If EDS or Company is prevented from performing any of their obligations hereunder in whole or in part as a result of an Act of God, war, civil disturbance, court order, labor dispute, or any other cause beyond their reasonable control, such non-performance shall not be a ground for termination or default. Immediately upon the occurrence of any such event, if such event has prevented EDS from performing services hereunder, EDS shall commence to use its best efforts to provide, directly or indirectly, alternate, and to the extent practicable, comparable performance. In the event of non-performance for any reason set forth in this paragraph for three (3) business days, and if during such three (3) days EDS is unable to make arrangement to provide performance adequate to process those data necessary to Company to continue to serve its customers (including its clearing customers), Company or its designee shall have access to the Systems which are at the time in use by EDS in its performance of this Agreement, and may thereafter make use of said Systems so that Company's business may continue to be processed during the period of non-performance caused by acts specified in this paragraph. During any such period of non-performance, EDS shall continue to be responsible for all the costs and expenses provided in this Agreement to be borne, or reimbursed to Company, by EDS; and, Company shall pay EDS all of the payments provided for hereunder for such period. If any such event prevents Company from making payments to EDS hereunder for fifteen (15) business days, EDS may cease to render all services hereunder until such time as Company is able to recommence payments.

28. *Special Services.* EDS will provide Company with such special services or supplies reasonably requested or approved by Company as are necessary to the performance of this Agreement, and not included in the services to be performed or supplies to be furnished by EDS under this Agreement or as may be in addition to any such requirements under this Agreement, including, but not limited to, special data entry services, such as conversion, program and test data keypunching, data entry, computer runs, or industrial or systems engineering services, provided that Company pay EDS a fee therefor. Such fee shall

be based upon EDS' then prevailing rates for personnel, machine time and supplies used in providing such services or supplies.

29. *Disagreements.* In the event of any disagreement between Company and EDS as to purpose, meaning, intention or effect of any provision of this Agreement or this Agreement as a whole, the parties hereto will faithfully undertake to resolve between themselves any such disagreement and failing to do so, Company and EDS will each designate one person to act on behalf of each company which two persons together will choose an independent third person who with them will attempt to resolve any disagreement, except that the efforts of such persons shall in no way be binding upon either Company or EDS and both such parties shall be entitled respectively to all of the rights and remedies available to them at law or in equity.

30. *EDS Regional Computer Center.* In the event that EDS shall establish a regional computer center at a location other than New York City at which Company's work will be processed, EDS will assume the cost of moving the EDP equipment owned or used by EDS in the performance of its duties hereunder and will assume the occupancy costs of such regional center. All space supplied by Company to EDS prior to any such establishment of a regional data center (other than the data centers at 77 Water Street and 25 Broadway) shall be used principally for Company's business. After the establishment of a regional data center, any Company space not used substantially for Company's business shall be turned back to Company. Space used for Company's business shall be in any location in any Company office in the Wall Street area of New York City, as it shall designate.

31. *Profitability Guarantee.* In the event that EDS shall determine that for the period from the Effective Date to June 30, 1974 it did not receive sufficient revenues pursuant to this Agreement to achieve a net pre-tax profit equal to the net pre-tax profit achieved by it and EDSC, collectively, for the fiscal year ended June 30, 1973 from the Prior Contracts, it shall so notify Company, in writing. In making this determination, all costs of termination and conversion, as described in Paragraph 4, *supra*, and the payments therein provided to be paid to EDS shall be disregarded. Thereupon Company shall promptly pay EDS a sum equal to the deficiency; provided, however, if EDS'

average annual net pre-tax profit under this agreement (calculated as aforesaid) for the three years ending June 30, 1976 equals or exceeds the EDS-EDSC net pre-tax profits from the Prior Contracts for the fiscal year ended June 30, 1973, it shall promptly return to Company any payments made by Company under this paragraph. Walston unconditionally guarantees the obligation of Company under this paragraph 31, and if Walston shall make payment to EDS as herein provided, it shall be subrogated to Company's right to any refund. Company's Chief Financial Officer shall have reasonable rights to inspect EDS' books and records with respect to the matters referred to in this paragraph 31.

32. *Notices.* Any notice or other communication required or provided for hereunder shall be sufficiently given if sent by certified or registered mail, postage prepaid, addressed as follows:

To: duPont Glore Forgan Incorporated
One Wall Street
New York, New York 10005
Attn.: of the President

To: E. D. Systems Corporation
1300 EDS Center
Exchange Park
Attn.: of the President
Dallas, Texas 75235

33. *Binding Character.* This Agreement of Amendment shall be binding on the parties and their heirs, successors and assigns, but neither party may assign this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld; provided, however, that EDS or Company may assign this Agreement without the consent of the other, to any corporation or firm which upon such assignment, shall expressly assume this Agreement and which (i) is an 80% or more owned subsidiary or a parent of Company or EDS, as the case may be, or (ii) shall acquire all or substantially all of the assets of Company or EDS, as the case may be, or (iii) shall be the surviving corporation into which Company or EDS, as the case may be, shall have merged, provided in any such case that EDS or Company, as the case may be, shall be reasonably satisfied with the financial stability of such assignee.

34. *Entire Agreement.* This Agreement of Amendment constitutes the entire agreement between the parties hereto, and there are no understandings or agreements relative hereto concerning any other matter or thing whatsoever which are not fully expressed herein. No change made herein shall be valid unless in writing and executed by all parties.

DUPONT GLORE FORGAN INCORPORATED
(Company)

Date July 2, 1973

By: G. MICHAEL BOSWELL
Vice President

WALSTON & CO., INC.
(Walston)

Date July 2, 1973

By: G. T. THOMSON

E. D. SYSTEMS CORPORATION
(EDS)

Date July 2, 1973

By: M. A. HART III

ELECTRONIC DATA SYSTEMS CORPORATION
(EDSC)

Date July 2, 1973

By: M. A. HART III

SCHEDULE A

OUTSTANDING AND FUTURE BILLING FOR COMPANY & WALSTON AS OF 6/13/73

COMPANY:

Invoice	Date	Amount	Description
678	10/5/72	$ 424,892.00	EDP Related Savings
	Total	$424,892.00	

Future Billings:

June Communications Rebillables
Expenses of Contracted Personnel for June
Travel & Expense Reimbursements
Microfilm Rebillables

duPont is due a $424,892.00 credit payable as of July 1, 1973, for matters occurring prior thereto.

WALSTON:

June Trade Volume
Microfilm Rebillable

25

SCHEDULE B

Systems under development as referred to in paragraph 8(a)(11)

Dividends

Design and install NRA-1087 tax system

Cashiers

New Transfer system
System to reduce clerical processing, card handling
Also provide increased management control

POTC, PCSE Regional Clearing Reconciliation
System to allow clearing through West Coast branch offices; saves one day mailing delay

Regional CCS Depositories
Phase II—Automatic "washes" of overnight box—eliminates hand entries

General Ledger "Feeds" to Needs Analysis
Program modifications to feed security requirements to Needs Analysis for posting to Boxman Report to have securities pulled from vault. Currently performed by manually balancing two separate reports.

Various and Sundry Customer Service Requests
Specifications have previously been gathered—no programming has begun.

Floor Brokers

Fitch Report
Produce Fitch Report from tape. Produce Within Price Range and Outside Price Range reports and transmissions (over wire) to branch offices. (Currently done manually including teletypist).

Purchase & Sales

Outstanding Customer Service Requests
Includes newsort sequence on broker to broker rec/del tickets. Print

Canadian discount rate on confirms, state tax calculation on stock splits, daily NYS tax—syndicate origins 87-36, correct Canadian rate on "as-of" trades.

325 Hudson Street

Outstanding requests on 1103 Report
Correct debit and credit totals, add solid line for security break.

Commodities

Modifications to System
—Reformat AE Commodity Report
—Make maintenance list report more readable
—Indicate "Exchange" on Customer Profile Report
—Various management reports (Commission vs. Average Equity, Customer Profitability, Rule 325 Calculations)

Credit

Provide summary totals for money owed in each account on ATBI
Correct trades marked incorrectly paid or unpaid
Set money equal to old debit on ATBI
Correct oldest amount due after cash receipt
Correct cash settlement — 1 with credit balance in complex acct.
Correct "When-Issue" going regular routine
Delete erroneous federal call after journal changes short v. box position
Correct minimum equity federal call ommission
Transmit selected last-day items over wire

Audit

Audit preparation
Accomplish necessary preparations for annual audits

Walston Systems

1. CDC Installation—Walston branches installed on CDC Communications System.
2. Transfer System—The SERVCO Transfer System.
3. Commodity System—The SERVCO Commodity System.

SCHEDULE C

Description/Model	Serial Number	Monthly Depreciation	Date Fully Depreciated
Tape Control	16173	$ 577.90	3/76
Tape Control	18586	577.90	3/76
Tape Drive	31959	407.11	3/76
Tape Drive	32099	407.11	3/76
Tape Drive	31939	407.11	3/76
Tape Switching Unit	11434	475.06	3/76
Reader/Punch	11855	331.70	7/76
Reader/Punch	12688	331.27	7/76
Printer	31620	397.60	7/76
Printer	32270	397.60	7/76
Printer	32269	397.60	7/76
Control Unit (Printer/Reader)	50319	735.06	7/76
Print Train	14975	25.60	7/76
Print Train	15101	25.60	7/76
Print Train	14262	25.60	7/76
2314	11229	2,737.55	7/76
2314	11230	2,737.55	7/76
TOTAL MONTHLY DEPRECIATION		$10,994.92	

EXHIBIT 5
to
Master Agreement

[CONFORMED COPY]

AMENDMENT AND AGREEMENT
DATED AS OF JULY 2, 1973
TO
LOAN AGREEMENT
DATED AS OF FEBRUARY 16, 1973

WALSTON & Co., INC., a Delaware corporation ("BORROWER"), and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association ("BANK"), agree that the Loan Agreement between them, dated as of February 16, 1973 (the "Loan Agreement"), is hereby amended as follows:

1. Paragraph 1.3 is hereby added to the Loan Agreement as follows:

"1.3. Simultaneously with the delivery of audited consolidated financial statements of BORROWER and its Subsidiaries pursuant to Paragraph 7.1 hereof for the fiscal years ending November 30, 1973, 1974, 1975 and 1976, and from time to time subsequent to each of such dates if necessary to achieve the maximum prepayment provided for herein, BORROWER will make prepayments, without premium or penalty, on the Note, to the extent that any such prepayments together with the payment of the same percentage of the maximum prepayment provided to be made by BORROWER to Security National Bank simultaneously therewith pursuant to Paragraph 1.3 of the Loan Agreement, dated as of November 27, 1972, between BORROWER and Security National Bank, as amended as of July 2, 1973 (but excluding any other payments based upon Consolidated Net Income of BORROWER payable at that time, none of which other payments shall be made by BORROWER until payment in full by BORROWER to BANK of the maximum prepayment provided for herein), would not result in the occurrence of an event which constitutes an Event of Acceleration or Default (as defined in Paragraph 6.1 hereof) or with the giving of notice or lapse of time, or both, would not become an Event of Acceleration or Default, and to the extent that such prepayments to BANK pursuant to this Paragraph 1.3 would not exceed in an amount (to the next higher multiple of $1,000) equal in the aggregate for each period or fiscal year referred to below

of up to 16⅔% of Consolidated Net Income (which shall always for purposes of this Paragraph 1.3 give effect as a pre-tax item to the duPont Share of Walston's Consolidated Pre-Tax Profits as such term is defined in the Clearing and Related Services Agreement, dated as of July 2, 1973, between BORROWER and duPont Glore Forgan Incorporated) of BORROWER for the period July 2 through November 30, 1973, and for each of the fiscal years ending November 30, 1974, 1975 and 1976 so long as the Note is outstanding. Such prepayments shall be applied to the latest maturing installments of principal of the Note if BANK shall so elect. BORROWER covenants that it shall not make, incur or suffer to exist any other obligation to make any prepayment of Indebtedness based upon the results of its operations (including, without limitation, any prepayment based upon Consolidated Net Income) other than the obligation to prepay Indebtedness to Security National Bank in the amount of 33⅓% of Consolidated Net Income for each period and fiscal year referred to above."

2. The definition of "Junior Subordinated Indebtedness" in Paragraph 2.4 is hereby amended to substitute for the present first six lines thereof the following:

"2.4. 'Junior Subordinated Indebtedness' shall mean Indebtedness issued and outstanding from time to time pursuant to the Capital Agreement, dated as of July 2, 1973, among BORROWER, PHM & Co. and duPont Glore Forgan Incorporated and pursuant to the Charleston Agreement, as defined in Paragraph 7.3 hereof, and the Senior Subordinated Convertible Debentures of BORROWER, due September 30, 1982, as amended on November 10, 1972, and Indebtedness, which satisfies both of the following:"

3. Paragraph 3.1 of the Loan Agreement is hereby amended by inserting in the eighth line thereof after "February 16, 1973" the following: "and senior to any Indebtedness of BORROWER under the Capital Agreement, dated as of July 2, 1973, among BORROWER, PHM & Co. and duPont Glore Forgan Incorporated".

4. Paragraph 7.3 of the Loan Agreement is hereby amended so that the last sentence thereof shall read in its entirety as follows:

"The term 'Charleston Agreement' means the Purchase Agreement, dated July 5, 1972, between BORROWER and Charleston Investment Company, as amended on August 18, October 12

and November 27, 1972, and as of February 16 and July 2, 1973, but such term shall not mean or include any subsequent amendment unless BANK shall have consented in writing thereto."

5. Paragraph 7.4 of the Loan Agreement is hereby amended to read in its entirety as follows:

"7.4. BORROWER will not permit its Net Worth, less Senior Subordinated Indebtedness, to be less than $25,000,000."

6. Paragraphs 7.6, 7.7 and 7.8 are hereby added to the Loan Agreement as follows:

"7.6. BORROWER shall not permit its Aggregate Indebtedness to be for more than 15 consecutive business days a greater percentage of its Net Capital than 70% of the percentage specified in Rule 326(a) of the Board of Directors of the Exchange or any successor Rule thereto.

"7.7. BORROWER shall neither declare nor pay any dividend.

"7.8. BORROWER will prepay the Indebtedness evidenced by the Note with the net proceeds to BORROWER of any public offering by BORROWER of its securities, such prepayment to be made promptly upon receipt by BORROWER of such proceeds; *provided, however,* that, if such net proceeds are not equal to at least aggregate of the Indebtedness then evidenced by the Note and the Senior Subordinated Note of BORROWER due 1977 payable to Security National Bank, then 33⅓% of such net proceeds shall be applied to the prepayment of the Indebtedness evidenced by the Note."

7. Paragraph 8 is hereby added to the Loan Agreement as follows, and present Paragraph 8 shall become Paragraph 9:

"8. *Pledge.* BORROWER and BANK will enter into as of July 2, 1973, a Pledge Agreement substantially in the form of Exhibit C hereto providing for the pledge by BORROWER with BANK of a Senior Subordinated Debenture, due June 30, 1983, of duPont Glore Forgan Incorporated in the principal amount of $2,866,667 to secure the payment by BORROWER of the indebtedness evidenced by the Note."

In all other respects, the Loan Agreement shall be unchanged and remain in full force and effect.

BANK hereby agrees that the consummation of the transactions contemplated by the Master Agreement, dated as of July 2, 1973, among BORROWER, duPont Glore Forgan Incorporated, Charleston Investment Company and PHM & Co. does not and will not constitute a failure of BORROWER to comply with Section 11.M. of the Charleston Agreement (as defined in Paragraph 7.3 of the Loan Agreement), which Section 11.M. is incorporated by reference for the benefit of BANK in Paragraph 7.3 of the Loan Agreement.

BANK hereby confirms that Indebtedness held by Security National Bank pursuant to a Loan Agreement, dated as of November 27, 1972, as amended as of July 2, 1973, between such Bank and BORROWER is Senior Subordinated Indebtedness as defined in Paragraph 2 of the Loan Agreement.

This instrument may be signed in a number of counterparts which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, BANK and BORROWER have signed this Amendment and Agreement as of the date first above written.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

By W. W. NELSON
Vice President

WALSTON & CO., INC.

By CHARLES W. COX
First Vice President

EXHIBIT C

PLEDGE AGREEMENT

Pledge Agreement, dated as of July 2, 1973, by and between Walston & Co., Inc. ("BORROWER") and Bank of America National Trust and Savings Association ("BANK").

Reference is made to a certain Loan Agreement (the "Loan Agreement"), dated as of February 16, 1973, as amended as of July 2, 1973, between BORROWER and BANK pursuant to which BANK lent BORROWER $2,500,000, which indebtedness is represented by a Senior Subordinated Note due 1978 of BORROWER payable to BANK (the "Note").

1. *Security Interest.* In consideration for the consent of BANK to the entering into by BORROWER of the Master Agreement, dated as of July 2, 1973, among BORROWER, duPont Glore Forgan Incorporated ("DGF"), PHM & Co. and Charleston Investment Company and to the consummation of the transactions contemplated by such Master Agreement to be consummated, BORROWER has pledged with BANK, as pledgee, under the provisions of this Agreement and does hereby grant BANK a security interest in the Senior Subordinated Debenture, due June 30, 1983, of DGF in the principal amount of $2,866,667 payable to BORROWER (the "DGF Debenture") as collateral security for the payment of the indebtedness represented by the Note and the performance by BORROWER of its other obligations under the Loan Agreement.

2. *Rights.* BORROWER agrees with BANK as follows, it being understood, however, that any provision of this Agreement as it pertains to the assignment, sale, transfer or other disposition of the DGF Debenture shall be subject to the condition that the DGF Debenture may not be assigned, sold, transferred or otherwise disposed of except to a transferee, purchaser, assignee or other holder approved by the New York Stock Exchange, Inc.:

(A) Unless and until an Event of Default (as defined in the Loan Agreement) shall have occurred and be continuing BORROWER shall be entitled to receive any interest or payments of principal on the DGF Debenture;

(B) If any Event of Default shall have occurred and while the same is continuing, interest and principal paid upon or in respect of the DGF Debenture or any part thereof shall be paid directly to and shall be retained by BANK and held by it pursuant to the rights and remedies of a secured party under the Uniform Commercial Code as in effect at the time in New York. Any cash at the time held by BANK under this Agreement shall be applied by BANK to the payment of the costs and expenses of BANK and its agents and counsel and to the payment of the indebtedness represented by the Note and any interest accrued thereon.

3. *Bank Appointed Attorney-In-Fact.* BANK is hereby appointed the Attorney-in-Fact of BORROWER for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instruments which BANK may deem necessary or advisable to accomplish the purposes hereof, which appointment as Attorney-in-Fact is irrevocable and coupled with an interest.

4. *Termination.* This Agreement shall terminate, and BANK shall promptly thereafter assign, transfer and deliver, against receipt, the DGF Debenture to BORROWER when all the indebtedness including interest accrued thereon under the Note has been paid in full.

5. *Notices.* Any communications between the parties hereto or notices provided herein to be given may be given by mailing the same, postage prepaid, to BANK at its National Division Service Center, P. O. Box 37000, San Francisco, California 94137, and to BORROWER at 77 Water Street, New York, New York 10005, or to such other addresses as either party may in writing hereafter indicate.

6. *No Waiver.* No delay or omission to exercise any right, power or remedy accruing to BANK upon any breach or default of BORROWER under this Agreement shall impair any such right, power or remedy of BANK, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, con-

sent or approval of any kind or character on the part of BANK of any breach or default under this Agreement, or any waiver on the part of BANK or any provisions or condition of this Agreement, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or by law or otherwise afforded to BANK shall be cumulative and not alternate.

7. *New York Law.* This Agreement, and any note or other instrument or agreement required hereunder, shall be governed by, and construed under, the laws of the State of New York.

8. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of BORROWER and BANK and their respective successors and assigns.

9. *Counterparts.* This instrument may be signed in a number of counterparts which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Pledge Agreement as of the Second Day of July, 1973.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

By W. W. NELSON
Vice President

WALSTON & CO., INC.

By CHARLES W. COX
First Vice President

EXHIBIT 6
to
Master Agreement

[CONFORMED COPY]

AMENDMENT AND AGREEMENT DATED AS OF JULY 2, 1973

TO

LOAN AGREEMENT DATED AS OF NOVEMBER 27, 1972

WALSTON & Co., INC., a Delaware corporation ("BORROWER"), and SECURITY NATIONAL BANK, a national banking association ("BANK"), agree that the Loan Agreement between them, dated as of November 27, 1972, (the "Loan Agreement") is hereby amended as follows:

1. Paragraph 1.3 of the Loan Agreement is hereby amended to read in its entirety as follows:

"1.3 Simultaneously with the delivery of audited consolidated financial statements of BORROWER and its Subsidiaries pursuant to Paragraph 7.1 hereof for the fiscal years ending November 30, 1973, 1974, 1975 and 1976, and from time to time subsequent to each of such dates if necessary to achieve the maximum prepayment provided for herein, BORROWER will make prepayments without premium or penalty, on the Note, to the extent that any such prepayments together with the payment of the same percentage of the maximum prepayment provided to be made by BORROWER to Bank of America National Trust and Savings Association simultaneously therewith pursuant to Paragraph 1.3 of the Loan Agreement, dated as of February 16, 1973, between BORROWER and Bank of America National Trust and Savings Association, as amended as of July 2, 1973 (but excluding any other payments based upon Consolidated Net Income of BORROWER payable at that time, none of which other payments shall be made by BORROWER until payment in full by BORROWER to BANK of the maximum prepayment provided for herein) would not result in the occurrence of an event which constitutes an Event of Acceleration or Default (as defined in Paragraph 6.1 hereof) or with the giving of notice or lapse of time, or both, would not become an Event of Acceleration or Default, in an amount (to the next higher

multiple $1,000) equal in the aggregate for each period or fiscal year referred to below of up to 33⅓% of Consolidated Net Income (which shall always for purposes of this Paragraph 1.3 give effect as a pre-tax item to the duPont Share of Walston's Consolidated Pre-Tax Profits as such term is defined in the Clearing and Related Services Agreement, dated as of July 2, 1973, between BORROWER and duPont Glore Forgan Incorporated) of BORROWER for the period July 2 through November 30, 1973, and for each of the fiscal years ending November 30, 1974, 1975 and 1976 so long as the Note is outstanding. Each such prepayment shall be applied to the latest maturing instalments of principal of the Note if Bank shall so elect. BORROWER covenants that it shall not make, incur or suffer to exist any other obligation to make any prepayment of Indebtedness based upon the results of its operations (including, without limitation, any prepayment based upon Consolidated Net Income) other than the obligation to prepay Indebtedness to Bank of America National Trust and Savings Association in the amount of 16⅔% of Consolidated Net Income for each period and fiscal year referred to above."

2. The definition of "Junior Subordinated Indebtedness" in Paragraph 2 of the Loan Agreement is deleted in its entirety.

3. Paragraph 3.1 of the Loan Agreement is hereby amended by inserting in the eighth line thereof after "November 27, 1972" the following "and as of February 16, 1973, and senior to any Indebtedness of BORROWER under the Capital Agreement, dated as of July 2, 1973, among BORROWER, PHM & Co. and duPont Glore Forgan Incorporated".

4. Paragraph 3.1(b) of the Loan Agreement is deleted in its entirety.

5. Paragraph 6.1(a) of the Loan Agreement is amended to read in its entirety as follows:

"(a) BORROWER shall default in the payment of interest on the Note or on any other evidence of indebtedness for borrowed money in the principal amount then outstanding in excess of $100,000 of BORROWER, and such default shall continue for five days, or shall default in the payment of principal due on the Note

or on any other evidence of indebtedness for borrowed money in the principal amount then outstanding in excess of $100,000 of BORROWER; or".

6. Paragraph 6.1(d) of the Loan Agreement is amended by changing the numerical percentage "91.6%" to read "87.5%".

7. The last sentence of Paragraph 6.2(b) of the Loan Agreement is amended to read in its entirety as follows:

"For the purposes of this Paragraph 6.2 and for the purpose of BORROWER's secured demand notes, subordinated accounts and other agreements evidencing or governing subordinated indebtedness of BORROWER, a liquidation as described in clause (1) of Paragraph 6.1 shall be deemed to have commenced on the day after the earlier of (i) the accelerated maturity date or (ii) the last day of the six-month period (or longer period, if any, granted by BANK) of suspension of the obligation of BORROWER to pay the principal amount of the Note or any installment thereof or interest thereon."

8. The last sentence of Paragraph 7.3 of the Loan Agreement is amended to read in its entirety as follows:

"The term 'Charleston Agreement' means the Purchase Agreement, dated July 5, 1972, between BORROWER and Charleston Investment Company, as amended on August 18, October 12 and November 27, 1972, and as of February 16 and July 2, 1973, but such term shall not mean or include any subsequent amendment unless BANK shall have consented in writing thereto."

9. Paragraph 7.4 of the Loan Agreement is hereby amended to read in its entirety as follows:

"7.4 BORROWER will not permit its Net Worth, less Senior Subordinated Indebtedness, to be less than $25,000,000."

10. Paragraphs 7.5, 7.6 and 7.7 are hereby added to the Loan Agreement as follows:

"7.5. BORROWER shall not permit its Aggregate Indebtedness to be for more than 15 consecutive business days a greater per-

centage of its Net Capital than 70% of percentage specified in Rule 326(a) of the Board of Directors of the Exchange or any successor Rule thereto.

"7.6. BORROWER shall neither declare nor pay any dividend.

"7.7. BORROWER will prepay the Indebtedness evidenced by the Note with the net proceeds to BORROWER of any public offering by BORROWER of its securities, such prepayment to be made promptly upon receipt by BORROWER of such proceeds; *provided, however,* that if such net proceeds are not equal to at least the aggregate of the Indebtedness then evidenced by the Note and the Senior Subordinated Note of the BORROWER due 1978 payable to Bank of America National Trust and Savings Association, then 66⅔% of such net proceeds shall be applied to the prepayment of the Indebtedness evidenced by the Note."

11. Paragraph 8 is hereby added to the Loan Agreement as follows, and present Paragraph 8 shall become Paragraph 9:

"8. *Pledge.* BORROWER and BANK have entered into as of July 2, 1973, a Pledge Agreement substantially in the form of Exhibit C hereto providing for the pledge by BORROWER with BANK of a Senior Subordinated Debenture, due June 30, 1983, of duPont Glore Forgan Incorporated in the principal amount of $5,733,333 to secure the payment by BORROWER of the indebtedness evidenced by the Note, and the provisions of Paragraph 3 hereof shall be construed consistently therewith."

In all other respects, the Loan Agreement shall be unchanged and remain in full force and effect.

BANK hereby agrees that the consummation of the transactions contemplated by the Master Agreement, dated as of July 2, 1973, among BORROWER, duPont Glore Forgan Incorporated, Charleston Investment Company and PHM & Co. does not and will not constitute a failure of BORROWER to comply with Section 11.M. of the Charleston Agreement (as defined in Paragraph 7.3 of the Loan Agreement), which Section 11.M. is incorporated by reference for the benefit of BANK in Paragraph 7.3 of the Loan Agreement.

BANK hereby confirms that Indebtedness held by Bank of America National Trust and Savings Association pursuant to a Loan Agreement, dated as of February 16, 1973, as amended as of July 2, 1973, between such Bank and BORROWER is Senior Subordinated Indebtedness as defined in Paragraph 2 of the Loan Agreement.

This instrument may be signed in a number of counterparts which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, BANK and BORROWER have executed this Amendment and Agreement as of the date first above written.

SECURITY NATIONAL BANK

By W. LOWE
Executive Vice President

WALSTON & CO., INC.

By CHARLES W. COX
First Vice President

EXHIBIT C

PLEDGE AGREEMENT

Pledge Agreement, dated as of July 2, 1973, by and between Walston & Co., Inc. ("BORROWER") and Security National Bank ("BANK").

Reference is made to a certain Loan Agreement (the "Loan Agreement") dated as of November 27, 1972, as amended as of July 2, 1973, between BORROWER and BANK pursuant to which BANK lent BORROWER $5,000,000, which indebtedness is represented by a Senior Subordinated Note due 1977 of BORROWER payable to BANK (the "Note").

1. *Security Interest.* In consideration for the consent of BANK to the entering into by BORROWER of the Master Agreement, dated as of July 2, 1973, among BORROWER, duPont Glore Forgan Incorporated ("DGF"), PHM & Co. and Charleston Investment Company and to the consummation of the transactions contemplated by such Master Agreement to be consummated, BORROWER has pledged with BANK, as pledgee, under the provisions of this Agreement and does hereby grant BANK a security interest in the Senior Subordinated Debenture, due June 30, 1983, of DGF in the principal amount of $5,733,333 payable to BORROWER (the "DGF Debenture") as collateral security for the payment of the indebtedness represented by the Note and the performance by BORROWER of its other obligations under the Loan Agreement.

2. *Rights.* BORROWER agrees with BANK as follows, it being understood, however, that any provision of this Agreement as it pertains to the assignment, sale, transfer or other disposition of the DGF Debenture shall be subject to the condition that the DGF Debenture may not be assigned, sold, transferred or otherwise disposed of except to a transferee, purchaser, assignee or other holder approved by the New York Stock Exchange, Inc.:

(A) Unless and until an Event of Default (as defined in the Loan Agreement) shall have occurred and be continuing BORROWER shall be entitled to receive any interest or payments of principal on the DGF Debenture;

(B) If any Event of Default shall have occurred and while the same is continuing interest and principal paid upon or in respect

of the DGF Debenture or any part thereof shall be paid directly to and shall be retained by BANK and held by it pursuant to the rights and remedies of a secured party under the Uniform Commercial Code as in effect at the time in New York. Any cash at the time held by BANK under this Agreement shall be applied by BANK to the payment of the costs and expenses of BANK and its agents and counsel and to the payment of the indebtedness represented by the Note and any interest accrued thereon.

3. *Bank Appointed Attorney-In-Fact.* BANK is hereby appointed the Attorney-in-Fact of BORROWER for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instruments which BANK may deem necessary or advisable to accomplish the purposes hereof, which appointment as Attorney-in-Fact is irrevocable and coupled with an interest.

4. *Termination.* This Agreement shall terminate, and BANK shall promptly thereafter assign, transfer and deliver, against receipt, the DGF Debenture to BORROWER when all the indebtedness including interest accrued thereon under the Note has been paid in full.

5. *Notices.* Any communications between the parties hereto or notices provided herein to be given may be given by mailing the same, postage prepaid, to BANK at 110 Broad Hollow Road, Melville, New York 11746 (Attention: William W. Lowe, Executive Vice President), and to BORROWER at 77 Water Street, New York, New York 10005, or to such other addresses as either party may in writing hereafter indicate.

6. *No Waiver.* No delay or omission to exercise any right, power or remedy accruing to BANK upon any breach or default of BORROWER under this Agreement shall impair any such right, power or remedy of BANK, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of BANK of any breach or default under this Agreement, or any waiver on the part of

BANK of any provisions or condition of this Agreement, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or by law or otherwise afforded to BANK shall be cumulative and not alternate.

7. *New York Law.* This Agreement, and any note or other instrument or agreement required hereunder, shall be governed by, and construed under, the laws of the State of New York.

8. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of BORROWER and BANK and their respective successors and assigns.

9. *Counterparts.* This instrument may be signed in a number of counterparts which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Pledge Agreement as of the Second Day of July, 1973.

SECURITY NATIONAL BANK

By W. LOWE
Executive Vice President

WALSTON & CO., INC.

By CHARLES W. COX
First Vice President

[CONFORMED COPY]

EXHIBIT 7
to
Master Agreement

AMENDATORY AGREEMENT

DATED AS OF JULY 2, 1973
TO
PURCHASE AGREEMENT DATED JULY 5, 1972
AS HERETOFORE AMENDED
ON AUGUST 18, OCTOBER 12, AND NOVEMBER 27, 1972
AND FEBRUARY 16, 1973

AMENDATORY AGREEMENT dated as of July 2, 1973, by and between WALSTON & Co., INC., a corporation organized under the laws of the State of Delaware (the "Company"), and CHARLESTON INVESTMENT COMPANY, a Delaware corporation ("Charleston"), to the Purchase Agreement, dated July 5, 1972, between the Company and Charleston, as amended on August 18, October 12 and November 27, 1972, and as of February 16, 1973 (the "Purchase Agreement").

WITNESSETH:

WHEREAS, Walston, Charleston, duPont Glore Forgan Incorporated, a Delaware corporation ("duPont"), and PHM & Co. are parties to a Master Agreement, dated as of July 2, 1973 (the "Master Agreement"), pursuant to which certain agreements are to be entered into for the purpose of carrying out a realignment of the respective businesses of Walston and duPont; and

WHEREAS, one of such agreements to be entered into pursuant to the Master Agreement is to consummate certain amendments to the Purchase Agreement and to consummate the exchange by Charleston of 398,803 shares of Walston's Series A Convertible Preferred Stock (the "Series A Stock") presently held by Charleston for 398,803 shares of Walston's Series B Convertible Preferred Stock (the "Series B Stock") to be issued by Walston in exchange for the Series A Stock; and

WHEREAS, Walston has duly authorized the issuance of the Series B Stock and desires to issue the Series B Stock to Charleston in exchange for the Series A Stock and desires to amend the Purchase Agreement; and

WHEREAS, Charleston desires to receive and accept the Series B Stock in full consideration for the exchange of the Series A Stock presently held by Charleston and desires to amend the Purchase Agreement;

NOW, THEREFORE, in consideration of the premises and respective agreements of the parties herein contained, it was agreed, as follows:

A. *The Exchange.* The Company authorized the issuance of the Series B Stock pursuant to the certificate annexed hereto as Exhibit A and at the Closing (as defined in the Master Agreement) issued and delivered the Series B Stock to Charleston in exchange for the Series A Stock which Charleston delivered to the Company with duly executed stock powers attached.

B. *Amendment to the Purchase Agreement.* The Purchase Agreement is hereby amended as follows:

1. Section 5.B(v) is hereby deleted in its entirety.

2. Section 9.A.(2) is hereby amended so that the percentage set forth in the third line thereof shall read "5%."

3. Section 9.A.(2)(b) is hereby deleted in its entirety.

4. Section 9.A.(3)(i) is hereby amended to read in its entirety as follows:

> "(i) As long as Charleston owns securities of the Company having an aggregate cost to Charleston of at least $5,000,000, the Company will, not later than July 2, 1973, cause one designee of Charleston to be elected to and remain a member of the Board of Directors of the Company and of the Executive Committee of the Board of Directors of the Company."

5. Section 9.A.(3)(ii) is hereby deleted in its entirety.

6. Section 10A. is hereby deleted in its entirety.

7. Section 11.E. is hereby amended to read in its entirety as follows:

"E. The Company will not, and will not cause, suffer or permit any Subsidiary to, own (or sell short) securities and commodities which in the aggregate have a cost (plus short sale proceeds) greater than an amount equal to 20% of the Company's Net Worth; provided, however, that this restriction shall not apply to the ownership of: (i) debt securities rated BBB or better by Standard & Poor's Corporation or BAA or better by Moody's Investors Service, Inc.; (ii) securities being sold to the Company as an underwriter pursuant to a registration statement which has been declared effective by the Commission; (iii) securities purchased by the Company for resale by it through its Block Trading Department; (iv) securities purchased by the Company through its Option Department, if the Company owns an enforceable "put" with respect to such securities which protects it against loss due to a market decline of such securities and the Company is obligated under an outstanding enforceable "call" covering such securities; and (v) securities, including Indebtedness, of duPont Glore Forgan Incorporated."

8. Section 11.F. is hereby amended to read in its entirety as follows:

"F. The Company and its Subsidiaries will not own in their investment accounts (a) securities (other than debt securities rated BBB or better by Standard & Poor's Corporation or BAA or better by Moody's Investors Service, Inc.) having an aggregate cost greater than $500,000 or (b) commodities or (c) securities, including Indebtedness, of duPont Glore Forgan Incorporated."

9. Section 11.G. is hereby amended so that the last sentence thereof reads in its entirety as follows:

"In computing such Lease obligations of the Company and its Subsidiaries, increased payments under Leases required by increased real estate taxes, maintenance charges or similar items and payments under Leases assigned to the Company or assumed by the Company or for which the Com-

pany otherwise becomes responsible pursuant to the Transfer Agreement, dated as of July 2, 1973, between the Company and duPont Glore Forgan Incorporated shall be disregarded, and rentals received from sub-tenants for space or other property covered by Leases shall be allowed as a credit."

10. Section 11.H. is hereby amended to insert, between the first and second sentences thereof, the following sentence:

"The foregoing restriction shall not be applicable in any respect to the purchase by the Company of all or any part of the business or any assets or other property of duPont Glore Forgan Incorporated pursuant to the Master Agreement, dated as of July 2, 1973, among PHM & Co., duPont Glore Forgan Incorporated, Charleston and the Company."

11. Section 11.J. is hereby amended to add the following clause thereto:

"(xii) liens, encumbrances or charges existing or arising from events occurring prior to the opening of business on July 2, 1973 upon or affecting property of any kind whatsoever transferred to the Company by duPont Glore Forgan Incorporated pursuant to the Master Agreement, dated as of July 2, 1973, among PHM & Co., duPont Glore Forgan Incorporated and the Company."

12. Section 11.K. is hereby amended so that the last sentence thereof shall read in its entirety as follows:

"Nothing in this Section 11.K. shall be applicable to the sale, lease, transfer or other disposition of any assets, rights or other property of the Company pursuant to the Master Agreement dated as of July 2, 1973, among PHM & Co., duPont Glore Forgan Incorporated, Charleston and the Company or prevent the liquidation of any Subsidiary into its parent."

13. Section 11.L. is hereby amended to read in its entirety as follows:

"L. The Company will not, directly or indirectly, in any fiscal year, make any capital expenditure or incur any obligations for capital expenditures in excess of the aggregate

of (a) the Company's highest aggregate consolidated accruals for depreciation and leasehold amortization during any one of its preceding three fiscal years and (b) the aggregate consolidated accruals of duPont Glore Forgan Incorporated for depreciation and leasehold amortization for its fiscal year ended June 30, 1973, provided that no purchase by the Company pursuant to the Master Agreement, dated as of July 2, 1973, among PHM & Co., duPont Glore Forgan Incorporated, Charleston and the Company shall be deemed to be a capital expenditure."

14. Section 11.R. is hereby amended to read in its entirety as follows:

"R. Notwithstanding anything contained in Section 11.A. hereof to the contrary, the Company, from and after July 2, 1973, will not, and will not cause, suffer or permit any Subsidiary to, incur, create, issue, assume or guarantee any Indebtedness (other than Short Term Indebtedness, Indebtedness permitted by Section 11.A.(a)(ii), Section 11.A.(a)(iv) and Section 11.A.(b), the Subordinated Notes and Indebtedness to duPont Glore Forgan Incorporated pursuant to the Capital Agreement, dated as of July 2, 1973, between the Company, PHM & Co. and duPont Glore Forgan Incorporated, but including the Company's Senior Subordinated Convertible Debentures, Due September 30, 1982) unless either (i) the instrument evidencing and the agreement respecting the issuance of such Indebtedness contains no affirmative or negative covenants (other than the obligation to repay principal and to pay interest) the breach of which would give the holder thereof the right to accelerate the Company's obligations, in whole or in part, thereunder or (ii) no less than $5,000,000 principal amount of such Indebtedness is held by each holder of such Indebtedness."

15. Section 13 is hereby amended to read in its entirety as follows:

"13. **Events of Default or Acceleration; Suspension of Payment Obligation.** A. The occurrence of any of the events listed below in this Section 13.A. shall constitute an Event of Acceleration or Event of Default as hereinafter set forth.

(1) The Company shall default in the payment of interest on any Note and such default shall continue for five days or shall default in the payment of principal due on any Note; or

(2) Any representation or warranty made in writing by the Company in connection with the execution and delivery of this agreement, the consummation of the transactions contemplated hereby, the issuance and delivery of any Note, or in any certificate furnished pursuant to this agreement shall prove to be incorrect when made in any material respect; or

(3) The Company shall fail to perform any material term, covenant or agreement contained in this agreement or in any exhibit hereto and any such failure shall continue unremedied for 10 days after written notice thereof shall have been given to the Company by the holders of more than 60% of the principal amount of the Notes then outstanding; or

(4) The Commission, the Exchange or the NASD shall make a decision, enter an order, or take other action, in each case specifically by name with respect to the Company or any part of its business, which materially adversely affects the business taken as a whole of the Company and is likely to have such a continuing material adverse effect so as to render it unlikely that the Company would be able to pay the Notes in accordance with their terms and such decision, order or other action shall continue unstayed and in effect for a period of 90 days, or the Company shall cease to be a member organization of the Exchange or the NASD; or

(5) The Company shall fail to file any report or information required pursuant to SIPA (as defined Section 21), or shall fail to pay when due all or any part of an assessment made upon the Company pursuant to SIPA, and such failure shall not have been cured, by the filing of such report or information or by the making of such payment, together with interest thereon, within five days after receipt by the Company of written notice of such failure given by or on behalf of the Securities Investor Protection Corporation pursuant to section 10(a) of SIPA; or

(6) The Company shall, in breach of an agreement or undertaking, default in any obligation or obligations of the

Company for borrowed money in an aggregate amount in excess of $100,000 and such obligation or obligations shall have been accelerated or declared by the lender to be in default; or

(7) If a final judgment against the Company, in an amount in excess of $100,000 or 1% of the Company's Net Capital, whichever is greater, shall be rendered and if, within 60 days after entry thereof, such judgment shall not have been discharged or execution thereof stayed pending appeal, or if, within 60 days after the expiration of any such stay, such judgment shall not have been discharged; or

(8) The making of an application by the Securities Investor Protection Corporation for a decree adjudicating that customers of the Company are in need of the protection provided by SIPA and the failure of the Company to obtain the dismissal of such application within 30 days; or

(9) The Aggregate Indebtedness of the Company shall exceed 1,500% of its Net Capital for a period of not less than 15 consecutive business days, commencing on the date the Company first determines and notifies the Exchange or the Exchange first determines and notifies the Company that the Aggregate Indebtedness of the Company exceeds 1,500% of its Net Capital; or

(10) The Commission shall revoke the broker-dealer registration of the Company; or

(11) The Exchange shall suspend for a period in excess of 30 days (and not reinstate or suspend such suspension within such 30 days) or revoke the Company's membership as a member organization of the Exchange; or

(12) The dissolution or insolvency of the Company or the making of an assignment for the benefit of creditors by the Company or the commencement of any proceedings (by petition, application, answer, consent or otherwise) by the Company to be adjudicated a bankrupt or for the appointment of a receiver or trustee or similar officer for it or for a substantial part of its property or for reorganization, an arrangement, composition or other relief under the Bankruptcy Act or the taking of corporate action by the Company for any such purpose, a liquidation pursuant to SIPA or otherwise, a liquidation

deemed to have commenced under Section 13.B.(2), any other marshalling of the assets or liabilities of the Company or the commencement against the Company of any of the aforementioned proceedings and, in such latter case, the consent thereto by the Company or its admission of the material allegations thereof, or the continuance of such proceeding undismissed for a period of 60 days.

B. (1) In case of the occurrence of any event specified in subsections (1) through (7) of Section 13.A. (an "Event of Acceleration"), the Notes and each installment thereof with accrued interest shall, to the extent not already due and payable, become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are expressly waived by the Company, on the last business day of the sixth full calendar month after the date of a declaration to such effect delivered, by the holders of more than 60% of the principal amount of the Notes at the time outstanding, to the Company and the Exchange at any time during the continuance of such Event of Acceleration unremedied, the last business day of such sixth calendar month after such declaration being herein referred to as the "accelerated maturity date"; *provided, however,* that if such last business day of such sixth calendar month shall occur within one year from the date of any Note, the accelerated maturity date of such Note shall be postponed to the end of such year and *provided further, however,* that if on the accelerated maturity date the obligation of the Company to pay the principal amount of any of the Notes or any installment thereof is suspended by the provisions of Section 13.B.(2), then such Note and each installment thereof shall not be due and payable and shall not mature until the day after the accelerated maturity date; and *provided, further, however,* that payment of principal of and interest on the Notes shall remain subordinated to the extent provided in Section 12 of this agreement.

(2) The obligation of the Company to pay the principal amount of the Notes or any installment thereof (including any installment which would otherwise have theretofore been due), or any interest payment thereon, shall, whether or not a declaration shall have been mailed or delivered pursuant to subsection (1) of this Sec-

tion 13.B. and notwithstanding the occurrence of any Event of Acceleration, be suspended for any period of time (but in no case beyond the day after the accelerated maturity date if a declaration as provided in subsection (1) of this Section 13.B. has been received) during which after giving effect to payment of such principal, installment or interest (together with (i) the payment of any other obligation of the Company payable at or prior to the payment thereof, except any obligation subordinated in right of payment to the Company's obligations on the Notes, and (ii) the return of any secured demand note, except any secured demand note creating indebtedness subordinated in right of payment to the Company's obligations on the Notes, and the collateral therefor held by the Company and returnable at or prior to the payment thereof): (a) the Aggregate Indebtedness of the Company would exceed 1,200 percentum of its Net Capital at the time payment is to be made or such greater or lesser percentum as may be made applicable to the Company from time to time by the Exchange or a governmental agency or body having appropriate authority, or (b) its Net Capital would be less than the minimum dollar amount required by the Rules of the Board of Directors of the Exchange in effect at such time or such greater or lesser dollar amount as may be made applicable to the Company by a governmental agency or body having appropriate authority (the Net Capital necessary to enable the Company to comply with such 1,200 c. other percentum and such minimum dollar amount or such other dollar amount is referred to in this agreement as the "Applicable Minimum Capital"). Neither the principal amount of the Notes nor any installment thereof shall be deemed to have matured during any period of time during which the Company's obligation to pay such principal amount or installment is suspended. No such suspension, however, shall extend beyond the day after the accelerated maturity date if a declaration as aforesaid has been received. If the obligation of the Company to pay the principal amount of any Note or any installment thereof or any interest thereon is ever suspended for a period of six consecutive months or such longer period as may be granted by the holders of 60% of the aggregate principal amount of the Notes at the time outstanding, the Company shall take whatever steps are necessary to effect the rapid and orderly liquidation of its business and the Company also agrees to take such steps, if not theretofore taken, on the day after the accelerated maturity date.

For the purposes of this Section 13.B.(2) and for the purposes of the Company's secured demand notes, subordinated accounts and other agreements evidencing or governing subordinated indebtedness of the Company, a liquidation as described in Section 13.A.(12) shall be deemed to have commenced on the day after the earlier of (i) the accelerated maturity date o (ii) the last day of the six-month period (or longer period, if any, granted as aforesaid by holders of the Notes) of suspension of the obligation of the Company to pay the principal amount of the Notes or any installment thereof or interest thereon.

(3) If pursuant to the terms of the immediately preceding subsection (2) of this Section 13.B., the Company's obligation to pay the unpaid principal amount of any Note is suspended, the Company and Charleston recognize and agree that the Company may be summarily suspended by the Exchange.

C. Upon the occurrence of any Event of Acceleration, the Company shall, upon notice by the holders of more than 60% of the principal amount of the Notes at the time outstanding, as promptly as is consistent with the protection of its customers, make every effort to put itself in a position to pay the unpaid principal of the Notes, including without limitation, reducing its business, selling its assets and acquiring additional capital.

D. In case of the occurrence of any event specified in subsections (8) through (12) of Section 13.A. (an "Event of Default"), then, notwithstanding the provisions of Section 13.B., the Notes and each installment thereof and accrued interest thereon shall forthwith become due and payable without presentment, demand, protest or other notice of any kind all of which are hereby waived by the Company; *provided, however,* that payment of principal of and interest on the Notes shall remain subordinated to the extent provided in Section 12 of this Agreement. For purposes of this Agreement and of the Company's secured demand notes, subordinated accounts and other agreements evidencing or governing the Company's subordinate indebtedness, a liquidation as described in Section 13.A.(12) shall be deemed to have commenced on the date on which an Event of Default shall have occurred.

16. The definition of "Senior Subordinated Indebtedness" in Section 21 is hereby amended so that the last sentence thereof shall read in its entirety as follows:

> "Notwithstanding the foregoing, Indebtedness not held by a commercial bank or by duPont Glore Forgan Incorporated pursuant to the Capital Agreement, dated as of July 2, 1973, between the Company and duPont Glore Forgan Incorporated shall not be deemed Senior Subordinated Indebtedness unless it matures after the tenth anniversary of the Closing Date and does not contain repayment provisions requiring a percentage of the principal amount of such Indebtedness to be repaid on or before the repayment dates of the Notes higher than the percentage of the principal amount of the Notes to be repaid on those dates."

17. All references in the Purchase Agreement to the "Series A Stock" or the "Shares" shall mean the Series B Stock unless the context otherwise requires or unless the consequence thereof is contrary to the intent of the Purchase Agreement and this Amendatory Agreement.

In all other respects, the Purchase Agreement as heretofore amended shall be unchanged and remains in full force and effect.

C. *Charleston Acknowledgment*

1. Charleston hereby agrees that the consummation of the transactions contemplated to be consummated by the Master Agreement, dated as of July 2, 1973 among PHM & CO., duPont Glore Forgan Incorporated, Charleston and the Company (the "Master Agreement") does not and will not constitute a failure of the Company to comply with any of Section 9.A.(2)(c), 11.J., Section 11.M. and 11.N. of the Purchase Agreement.

2. Charleston hereby confirms that no amendment to the Certificate of Incorporation and By-Laws of the Company in effect on the date hereof or contemplated by the Master Agreement has materially and adversely affected or will materially and adversely affect the rights

of Charleston under the Purchase Agreement, as herein and heretofore amended.

IN WITNESS WHEREOF, Charleston and the Company have executed this amendatory Agreement as of the date first above written.

CHARLESTON INVESTMENT COMPANY

By MERVIN L. STAUFFER

WALSTON & CO., INC.

By G. T. THOMSON

EXHIBIT A

WALSTON & CO., INC.

CERTIFICATE

PURSUANT TO SECTION 151

OF THE

GENERAL CORPORATION LAW OF DELAWARE

WALSTON & CO., INC., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), DOES HEREBY CERTIFY that the following resolutions were duly adopted by the Board of Directors of the Corporation pursuant to Section 151 of the General Corporation Law of the State of Delaware:

RESOLVED, that pursuant to the provisions of Article Fourth of the Restated Certificate of Incorporation of this Corporation, this Board of Directors hereby authorizes the issuance of a series of the Series Preferred Stock, par value $5 per share, of the Corporation which shall consist initially of 398,803 shares and hereby fixes the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the shares of such series (in addition to those set forth in the Restated Certificate of Incorporation of the Corporation which are applicable to the Series Preferred Stock) as follows:

I. The designation of such series shall be "Series B Convertible Preferred Stock", and the number of shares of such series shall initially be 398,803, all of which shares shall be issued in exchange, on a share for share basis, for the 398,803 shares of the Corporation's Series A Convertible Preferred Stock presently issued and outstanding.

II. Until the later of July 2, 1983 or the termination of the Clearing and Related Services Agreement, dated as of July 2, 1973, between the Corporation and duPont Glore Forgan Incorporated, a Delaware corporation (the "Conclusion Date"), as such agreement may be amended, extended or renewed from time to time, the holders of shares of this series shall be entitled, for each share held, to ten times the number of votes to which the holder of each share of the Corporation's Common Stock, par value $5 per share ("Common Stock"), is entitled, and shall be entitled to such vote for each share upon all matters upon which the holders of Common Stock have the right to vote. After the Conclusion Date, the holders of shares of this series shall not be entitled

to any general voting rights. Shares of this series, together with the Common Stock and the shares of each other class or series of the Corporation's capital stock, shall be voted as a single class, except as otherwise required by law or in this resolution. The holders of shares of this series shall be entitled to receive notice of any meeting of stockholders of the Corporation. So long as any shares of this series remain outstanding the Corporation shall not, either directly or through merger or consolidation with any other corporation, without the affirmative vote at a meeting, or the written consent with or without a meeting, of the holders of at least 66⅔% of the number of shares of this series then outstanding, amend, alter or repeal any of the provisions hereof so as to adversely affect the preferences, special rights or powers of the shares of this series, or increase the number of shares of this series.

III. The shares of this series shall be entitled to receive, when and as declared by the Board of Directors out of funds legally available therefor, non-cumulative dividends at the annual rate of 40¢ per share, and no more, payable in cash on the last business day of December in each year. If in any year the Corporation shall have failed to pay such dividend on the shares of this series, the Corporation shall not pay any dividends or make any distributions (other than dividends payable in shares of Common Stock) upon shares of Common Stock in the following year.

IV. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of this series shall share ratably with the holders of shares of Common Stock on the same basis as if the shares of this series had immediately theretofore been converted into shares of Common Stock at the conversion rate then in effect. For the purposes hereof, a consolidation or merger of the Corporation with one or more other corporations shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary.

V. (a) The Board of Directors may not redeem all, or any number less than all, of the outstanding shares of this series until the Conclusion Date. Thereafter, the Board of Directors may redeem all, or any number less than all, of the outstanding shares of this series at a price of $10.03 per share. Not more than 60 and not less than 30 days previous to the date fixed for redemption, a notice of the time and place thereof shall be given to the holder of record of the shares so to be redeemed by first class mail, postage prepaid, addressed to such holder at his address appearing on the books of the Corporation. In case of the redemption of less than all the outstanding shares of this series the

shares to be redeemed shall be selected in such manner as may be prescribed by the Board of Directors. Upon such redemption date holders of shares of this series called for redemption shall cease to be stockholders with respect to such shares and thereafter such shares shall no longer be transferable on the books of the Corporation and such holders shall have no interest or claim against the Corporation with respect to such shares except (1) the right to receive payment of the redemption price upon surrender of their certificates, and (2) the right to exercise on or before the date fixed for redemption (as the same may be postponed pursuant to subparagraph (b) of this Paragraph V), the rights which the holders have to convert the shares so called for redemption into shares of Common Stock. The Board of Directors may cause the transfer books of the Corporation to be closed as to the shares to be redeemed.

(b) If on the redemption date, after giving effect to the payment of the redemption price, the Aggregate Indebtedness of the Corporation would exceed 1200 per centum of its Net Capital (as such terms are defined in the Rules of the New York Stock Exchange, Inc. (the "NYSE")) or its Net Capital would fail to equal or exceed the minimum dollar amount required by Rule 325(a) of the NYSE, or any similar rule applicable to the Corporation in effect at the time, the date of such redemption shall be postponed until such redemption can be effected without the Corporation's Aggregate Indebtedness exceeding 1200 per centum of its Net Capital and without its Net Capital being below the minimum dollar amount required under such Rule 325(a) or similar rule.

(c) Upon any redemption of shares of this series, the number of shares of this series which the Corporation shall have authority to issue shall be decreased by the number of shares so redeemed, and the shares so redeemed shall revert to the status of authorized and unissued shares of Series Preferred Stock of the Corporation.

VI. The shares of this series shall not be entitled to the benefits of any retirement or sinking fund.

VII. (a) Any share of this series may, at the election of the holder thereof, be converted at any time after the date hereof into fully paid and non-assessable shares of Common Stock at the rate of one share of Common Stock for each share of this series, as adjusted as hereinafter set forth.

(b) Any share of this series may be converted in full by the holder thereof upon surrender to the Corporation at its principal office in the City of New York of his certificate for a share of this series. Any

certificate for shares of this series may be converted in part by surrender of such certificate in the same manner and at the same place, with a notice of conversion executed to indicate the portion of the shares represented by the certificate to be converted. Upon any such partial conversion of a certificate, the Corporation at its expense shall promptly issue and deliver to or upon the order of the holder thereof a new certificate equal to the unconverted portion of such surrendered certificate. Each conversion shall be deemed to have been effected at the close of business on the date on which the Corporation shall have received such surrendered certificate, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the record holder or holders of the shares represented thereby on such date. Upon any conversion of shares of this series the number of shares of this series which the Corporation shall have authority to issue shall be decreased by the number of shares so converted, and the shares so converted shall revert to the status of authorized and unissued shares of Series Preferred Stock of the Corporation.

(c) Promptly after conversion by any holder of any shares of this series in full or in part the Corporation at its expense (including the payment by it of any applicable issue taxes) shall cause to be issued in the name of and delivered to such holder a certificate or certificates for the number of fully paid and non-assessable shares of Common Stock of the Corporation to which such holder shall be entitled upon such conversion, plus, in lieu of any fractional share to which such holder would otherwise be entitled, cash equal to such fraction multiplied by the current market price per share of Common Stock, as hereinafter defined, then in effect.

(d) The conversion rate shall be subject to adjustment as follows:

(1) Whenever the Corporation shall (A) declare a dividend on its Common Stock in shares of its Common Stock or securities convertible into or exchangeable for shares of its Common Stock, (B) subdivide its outstanding shares of Common Stock, (C) combine its outstanding shares of Common Stock into a smaller number of shares, or (D) issue any shares upon reclassification of its shares of Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is the continuing corporation), the conversion rate in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the holder of any share of this

series surrendered for conversion after such time shall be entitled to receive the number and kind of shares which he would have been entitled to receive had such share of this series been converted immediately prior to such time.

(2) Unless the holders of shares of this series shall be permitted to subscribe for or purchase shares of Common Stock of the Corporation on the same basis as if the shares of this series had theretofore been converted into Common Stock, whenever the Corporation shall fix a record date for the issuance of rights or warrants to all holders of its Common Stock entitling them to subscribe for or purchase shares of its Common Stock at a price per share less than the current market price per share of Common Stock, as hereinafter defined, on such record date, the number of shares of Common Stock into which each share of this series shall be convertible after such record date shall be determined by multiplying the number of shares of Common Stock into which such share of this series was convertible immediately prior to such record date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock offered for subscription or purchase and of which the denominator shall be the number of shares of Common Stock outstanding on such record date plus the number of shares of Common Stock which the aggregate offering price of the total number of shares so offered would purchase at such current market price. In the event that such rights or warrants are not so issued, the conversion rate shall again be adjusted to be the conversion rate which would then have been in effect if such record date had not been fixed.

(3) Whenever the Corporation shall fix a record date for the making of a distribution to all holders of its Common Stock (including any distribution made in connection with a consolidation or merger in which the Corporation is the continuing corporation) of evidences of its indebtedness, assets (excluding regular cash dividends payable out of earnings or earned surplus) or subscription rights or warrants (excluding those referred to in subdivision (2) above), the number of shares of Common Stock into which each share of this series shall be convertible after such record date shall be determined by multiplying the number of shares of Common Stock into which such share of this series was convertible immediately prior to such record date by a fraction of which the numerator shall be the current market price per share of Common Stock, as hereinafter defined, on such record date and

of which the denominator shall be such current market price per share of Common Stock less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive) of the portion of the evidences of indebtedness, assets or subscription rights or warrants so distributed applicable to one share of Common Stock. In the event that such distribution is not so made, the conversion rate shall again be adjusted to be the conversion rate which would then have been in effect if such record date had not been fixed.

(4) For the purpose of any computation under subparagraph (c) of this Paragraph VII or clauses (2) or (3) of this subparagraph (d) the current market price per share of Common Stock on any date shall mean the average of the closing prices of the Common Stock sales on all domestic exchanges on which the Common Stock may at the time be listed or admitted to trading, or, if there shall have been no sales on any such exchange on any such day, the average of the bid and asked prices at the end of such day, or, if the Common Stock shall not be so listed or admitted to trading, the average of the bid and asked prices at the end of the day in the domestic over-the-counter market, provided that the Common Stock is regularly quoted in the domestic over-the-counter market, in each such case averaged over a period of 20 consecutive business days prior to the day as of which market price is being determined; provided that if the Common Stock is listed on any domestic exchange the term "business days" as used in this sentence shall mean business days on which such exchange is open for trading. If at any time the Common Stock is not listed on any domestic exchange or regularly quoted in the domestic over-the-counter market, the current market price shall be deemed to be the net book value thereof determined, as of a date within 31 days preceding the date as of which a determination is required to be made, in accordance with Sections 6 and 7 of Article Fourteenth of the Restated Certificate of Incorporation of the Corporation in effect on August 19, 1972.

(5) No adjustment in the conversion rate shall be required unless such adjustment would require an increase or decrease of at least 1% in such rate, but any adjustments which by reason of this subdivision (5) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this subparagraph (d) shall be made to the nearest one-hundredth of a share.

(e) If any capital reorganization or reclassification of the capital stock of the Company, or any consolidation or merger of the Company with another corporation, or the sale of all or substantially all of its assets to another corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision shall be made whereby the holder of any share of this series shall thereafter have the right to receive, upon the basis and upon the terms and conditions specified in this Paragraph VII and in lieu of the shares of the Common Stock of the Corporation immediately theretofore receivable upon the conversion of a share of this series, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such stock immediately theretofore receivable upon conversion of a share of this series had such reorganization, reclassification, consolidation, merger or sale not taken place, and in any such case appropriate provision shall be made with respect to the rights and interest of the holders of the shares of this series to the end that the provisions hereof (including without limitation provisions for adjustments of the conversion rate and of the number of shares receivable upon the conversion of the shares of this series) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the conversion of a share of this series. The Corporation will not effect any such consolidation, merger or sale unless prior to the consummation thereof the successor corporation, if other than the Corporation, resulting from such consolidation or merger or the corporation purchasing such assets shall assume, by written instrument executed and mailed or delivered to and in form and substance satisfactory to the holders of the shares of this series (who shall not unreasonably withhold their approval) at the addresses of such holders appearing on the books of the Corporation, the obligation to deliver to such holders such shares of stock, securities or assets as, in accordance with the foregoing provisions such holders may be entitled to receive.

(f) Upon each adjustment of the conversion rate, the Corporation shall give written notice thereof by first class mail, postage prepaid, addressed to the holders of the shares of this series at the addresses of such holders as shown on the books of the Corporation. The notice shall state the conversion rate resulting from such adjustment and set forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

(g) In case at any time:

(1) the Corporation shall declare any cash dividend upon its Common Stock payable at a rate in excess of the rate of the last cash dividend theretofore paid;

(2) the Corporation shall declare any dividend upon its Common Stock payable in stock or authorize any other distribution (other than regular cash dividends) to the holders of its Common Stock;

(3) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock or any class or other rights;

(4) there shall be any capital reorganization, or reclassification of the capital stock of the Corporation (other than a transaction covered by subparagraphs (d) (1) (B) or (C), or consolidation or merger of the Corporation with, or sale, of all or substantially all of its assets to, another corporation; or

(5) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, the Corporation shall give, by first class mail, postage prepaid, addressed to the holders of the shares of this series at the addresses of such holders as shown on the books of the Corporation, (i) at least 20 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, and (ii) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 20 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (i) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing clause (ii) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be. The failure to give any such notice shall not invalidate any such corporate action.

(h) If any event occurs as to which in the opinion of the Board of Directors the other provisions of this Paragraph VII are not strictly applicable or if strictly applicable would not fairly protect the conversion rights of the holders of the shares of this series in accordance with the essential intent and principles of such provisions, then the Board of Directors shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to protect such conversion rights as aforesaid, but in no event shall any such adjustment have the effect of decreasing the conversion rate as otherwise determined pursuant to subparagraph (d) except in the event of a combination of shares of the type contemplated in subparagraph (d)(1)(c).

(i) The Corporation will not, by amendment of its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in carrying out all the provisions of this Paragraph VII. Without limiting the generality of the foregoing, the Corporation (1) will take all such action as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and non-assessable shares of stock upon the conversion in full of all shares of this series from time to time outstanding and (2) will not take any action if as a result thereof the total number of shares issuable upon conversion in full of all shares of this series at the time outstanding would exceed the authorized but unissued shares of the Corporation's Common Stock.

(j) As used in this Paragraph VII, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, par value $5 per share, as constituted on August 19, 1972 and shall also include any capital stock of any class of the Corporation thereafter authorized which shall not be limited to a fixed sum or percentage of par value in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided, however, that the shares receivable upon conversion of the shares of this series shall include only shares designated as Common Stock of the Corporation on August 19, 1972, or, in the case of any reclassification of the outstanding shares thereof, or in the case of any reorganization, consolidation, merger or sale, the stock, securities or assets provided for in subparagraph (e).

VIII. Nothing herein contained shall limit any legal right of the Corporation to purchase any shares of this series.

IX. Notwithstanding the provisions of Paragraph II hereof, in the event that, for the twelve-month period ended December 31, 1974, the Corporation does not have net income determined in the manner hereinafter provided, the holders of Series B Preferred Stock (automatically and without the filing of any further certificate) shall not, after the date of such determination, be entitled to any right to vote or to receive notice of any meeting of the holders of the capital stock of the Corporation or to exercise any voting power on any other matter, except as may otherwise be required by law. For the purposes hereof, net income shall mean the net income of the Corporation and its subsidiaries on a consolidated basis, determined in accordance with generally accepted accounting principles, consistently applied, but before giving effect to any extraordinary items of loss or liability whether actually paid, reserved or accrued if such extraordinary loss or liability resulted from or arose out of a transaction, occurrence or event happening prior to the opening of business on July 2, 1973, and before giving effect to the duPont Share of Walston's Consolidated Pre-Tax Profits for the twelve-month period ended December 31, 1974, as defined in Paragraph 6 of the Clearing and Related Services Agreement between the Corporation and duPont Glore Forgan Incorporated, made as of July 2, 1973. If the holders of 66⅔% of the total number of outstanding shares of the Series B Convertible Preferred Stock and the "Walston Designating Committee" as defined in the Voting Agreement dated July 2, 1973 between Charleston Investment Company and certain shareholders of Walston & Co., Inc. are unable to agree, before March 1, 1975, on whether the Corporation had net income, as heretofore defined, the Corporation shall cause to be performed at its expense a review of its results of operations for the twelve-month period ended December 31, 1974 by its regularly employed independent certified public accountants, which review shall be sufficient for such accountants to make a written determination as to the existence of any net income for such period and which determination shall be final and binding on the parties. In the event the Corporation has net income for the calendar year 1974, the voting rights of the holders of Series B Preferred Stock shall continue as provided in Paragraph II hereof.

RESOLVED, that pursuant to the provisions of Section 11 of Article Fourteenth of the Restated Certificate of Incorporation of this Corpora-

tion this Board of Directors hereby waives all of the rights and options of the Corporation contained in Section 1 of Article Fourteenth insofar as such rights and options would apply to the Series B Convertible Preferred Stock or the shares of Common Stock of the Corporation issuable upon conversion thereof or the shares of Common Stock of the Corporation issuable upon exercise of the Warrants issued pursuant to the Purchase Agreement dated July 5, 1972 between the Corporation and Charleston Investment Company, a Delaware corporation, as amended from time to time up to and as of July 2, 1973, or any other shares of the capital stock of the Corporation issuable pursuant to such Purchase Agreement or the Agreement and Plan of Reorganization executed pursuant thereto, as such agreements may be amended from time to time.

RESOLVED, that, effective upon the issuance by the Corporation to Charleston Investment Company of 398,803 shares of the Corporation's Series B Convertible Preferred Stock in exchange for the 398,803 shares of the Corporation's Series A Convertible Preferred Stock held by Charleston Investment Company and the delivery by Charleston Investment Company to the Corporation of the certificate or certificates representing such shares of Series A Convertible Preferred Stock, such shares of Series A Convertible Preferred Stock shall revert to the status of authorized but unissued shares of the Series Preferred Stock of the Corporation.

IN WITNESS WHEREOF, said WALSTON & CO., INC. has caused this Certificate to be signed by its Chairman of the Board and its corporate seal to be hereunto affixed and attested to by its Secretary as of this Second Day of July, 1973.

WALSTON & CO., INC.

By .....
DANIEL J. CULLEN
Chairman of the Board

Attest:

By .....
George C. Cabell, *Secretary*

12

STATE OF _____}
COUNTY OF _____} ss.:

BE IT REMEMBERED that on this day of , 1973, personally came before me ....., a Notary Public in and for the County and State aforesaid, ..., ..., of Walston & Co., Inc., known to me personally to be such, and duly acknowledged the foregoing certificate to be the act and deed of the said corporation, and that the facts therein stated are true.

Given under my hand and seal of office the day and year aforesaid.

[COMPOSITE CONFORMED COPY]

EXHIBIT 8
to
Master Agreement

CONSENT AND ACKNOWLEDGMENT

Dated as of July 2, 1973

WITH RESPECT TO

LOAN AGREEMENT

Dated as of February 15, 1973

Reference is made to the Loan Agreement, dated as of February 15, 1973 (the "Loan Agreement"), by and among PHM & Co., a limited partnership organized under the laws of the State of Texas ("BORROWER"), H. ROSS PEROT ("GUARANTOR"), BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, FIRST NATIONAL BANK IN DALLAS, THE FIRST NATIONAL BANK OF CHICAGO and MORGAN GUARANTY TRUST COMPANY OF NEW YORK (the "BANKS") and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, as agent for the Banks (in that capacity "AGENT"), and to the exhibits attached to the Loan Agreement (the "Exhibits"). The purpose of this Agreement is to take into account the transactions (the "Transactions") entered into as of July 2, 1973 between duPont Glore Forgan Incorporated ("duPont"), Walston & Co., Inc. ("Walston"), both Delaware corporations, and others, as contemplated by the Master Agreement between duPont, Walston and others, dated as of July 2, 1973, and the exhibits thereto.

Paragraph 6.2 of the Loan Agreement provides in part that BORROWER covenants and agrees that, and until full and final payment of all indebtedness under the Loan Agreement, BORROWER will not, without the prior written consent of AGENT, sell, lease or dispose of its business or assets as a whole or such as in the reasonable opinion of AGENT constitutes a substantial portion thereof. The Transactions contemplate that BORROWER may enter into an agreement with Walston pursuant to which Walston could buy 49.9% of BORROWER's equity and subordinated indebtedness interest in duPont.

Paragraph 7.8 of the Loan Agreement provides that it shall be an event of default if duPont shall take any steps toward merger or consolidation with, or acquistion of, any other corporation (other than a wholly-owned or substantially wholly-owned subsidiary).

The BANKS hereby consent to the Transactions and specifically agree and acknowledge to BORROWER and GUARANTOR that the consummation of the Transactions does not and will not be deemed to result in (a) the breach of the negative covenant of BORROWER contained in Paragraph 6.2 of the Loan Agreement or (b) an event of default within the meaning of Paragraph 7.8 of the Loan Agreement. This Consent and Acknowledgment shall not be deemed a consent to or acknowledgment of any transaction or event other than the Transactions.

This Consent and Acknowledgment may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

This Consent and Acknowledgment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, executors, administrators, legal representatives and assigns. Except as may be otherwise reflected herein, the Loan Agreement and the Exhibits shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Consent, Waiver and Acknowledgment to be duly executed as of the day and year first above written.

PHM & Co.

By H. R. PEROT

H. R. PEROT
H. R. PEROT

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

By JOHN A. LUCCHESI

3

First National Bank in Dallas

By J. R. Erwin
Vice President

The First National Bank
of Chicago

By Charles J. Caldebini, Jr.

Morgan Guaranty Trust Company
of New York

By George J. Jehn
Vice President

[CONFORMED COPY]

EXHIBIT 9
to
Master Agreement

AMENDATORY AGREEMENT

DATED AS OF

July 2, 1973

To

LETTER OF CREDIT AGREEMENT

Dated August 20, 1971

As Heretofore Amended on March 29, 1973

Reference is made to the Letter of Credit Agreement, dated August 20, 1971 (the "Letter of Credit Agreement"), among PHM & Co., a Texas limited partnership ("PHM"), H. Ross PEROT ("Perot"), MILLEDGE A. HART, III, and MORTON H. MEYERSON and FIRST NATIONAL BANK IN DALLAS ("Bank"), and to the related undated but signed note issued pursuant thereto (the "Note"), the related undated but signed collateral agreement delivered pursuant thereto (the "Collateral Agreement"), the Letter of Credit, No. 29437, issued by Bank thereunder (the "Second Letter of Credit"), all as amended pursuant to the Amendatory Agreement dated as of March 29, 1973, and the related Pledge and Security Agreement dated as of March 29, 1973 (the "Pledge and Security Agreement"). The purpose of this Amendatory Agreement is to set forth the understanding of the parties with respect to certain amendments to the Letter of Credit Agreement. Terms that are defined in the Letter of Credit Agreement are used herein as so defined.

1. *Amendment to the Letter of Credit Agreement.* The Letter of Credit Agreement is hereby amended as of the effective date of this Amendatory Agreement, as follows:

1.1 The third sentence of Paragraph I(1) of the Letter of Credit Agreement is amended to read in its entirety as follows:

> "The only business in which PHM has engaged or presently intends to engage is that which relates to the ownership of securities of DGF or any successor thereto and of Walston & Co., Inc. or any successor thereto, and PHM will obtain the written approval of Bank prior to changing its principal business."

1.2 The fourth sentence of Paragraph I(1) of the Letter of Credit Agreement is deleted in its entirety.

2. *Counterparts.* This Amendatory Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement.

3. *Effectiveness.* This Amendatory Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors, heirs, executors, administrators, legal representatives and assigns. Except as modified by this Amendatory Agreement and the Amendatory Agreement dated as of March 29, 1973, the Letter of Credit Agreement, the Note, the Collateral Agreement and the Pledge and Security Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendatory Agreement to be duly executed as of the day and year first above written.

PHM & Co.

By: H. R. PEROT
Managing Partner

H. ROSS PEROT
H. ROSS PEROT

MILLEDGE A. HART, III
MILLEDGE A. HART, III

MORTON MEYERSON
MORTON H. MEYERSON

FIRST NATIONAL BANK IN DALLAS

By: J. R. ERWIN
Vice President

[CONFORMED COPY]

EXHIBIT 10
to
Master Agreement

AMENDATORY AGREEMENT

DATED AS OF JULY 2, 1973

TO

SIXTH LOAN AGREEMENT

DATED AS OF AUGUST 30, 1968

SEVENTH LOAN AGREEMENT

DATED AS OF DECEMBER 30, 1968

AND

EIGHTH LOAN AGREEMENT

DATED AS OF SEPTEMBER 1, 1969

Reference is made to the Sixth Loan Agreement dated as of August 30, 1968 between THE WALL STREET LEASING CORPORATION, a New York Corporation ("Wall Street Leasing"), and CHEMICAL BANK NEW YORK TRUST COMPANY, a New York banking corporation ("Chemical"), and the exhibits thereto, the Seventh Loan Agreement dated as of December 30, 1968 between Wall Street Leasing and Chemical, and the exhibits thereto, and the Eighth Loan Agreement dated as of September 1, 1969 between Wall Street Leasing and Chemical, and the exhibits thereto, (collectively the "Loan Agreements"),

WHEREAS, DUPONT GLORE FORGAN INCORPORATED, a Delaware corporation ("duPont"), and WALSTON & Co., INC., a Delaware corporation ("Walston"), have this date entered into an agreement (the "Transfer Agreement") (a copy of which is attached hereto) whereby certain leases of property owned by Wall Street Leasing and leased to duPont are transferred to Walston; and

WHEREAS, Wall Street Leasing and Chemical desire that the Loan Agreements take into account the transactions effected pursuant to the Transfer Agreement,

NOW, THEREFORE, Wall Street Leasing and Chemical have executed and delivered this Amendatory Agreement for the purpose of setting

forth certain amendments, consents and acknowledgments with respect to the Loan Agreements. Otherwise than as specified herein, terms that are defined in the Loan Agreements are used herein as so defined.

1. *Amendment to Loan Agreements.* The Loan Agreements are hereby amended as of the effective date of this Amendatory Agreement as follows:

(a) The definition of *Lessee* in Section 1.1 of Article I of the Loan Agreements is amended to read in its entirety as follows:

"Lessee—shall mean duPont Glore Forgan Incorporated, a Delaware corporation (or any successor thereto) and/or Walston & Co., Inc., a Delaware corporation (or any successor thereto)."

(b) Section 4.2(j) of the Sixth Loan Agreement is amended to conform to the Sections 4.2(j) in the Seventh Loan Agreement and the Eighth Loan Agreement and to read in its entirety as follows:

"(j) engage in any business or other undertaking other than the business of:

(i) purchasing or leasing real property from any person for the purposes of leasing said property to the Lessee;

(ii) purchasing personal property from any person for the purpose of leasing said property to the Lessee;

(iii) leasing any of said property to the Lessee; and

(iv) selling, leasing or otherwise disposing of (to any person) any of such property theretofore leased by the Lessee from Wall Street but no longer required by the Lessee in its business by reason of obsolescence, replacement or otherwise."

2. *Waiver.* Chemical hereby waives any breach of any covenant of Wall Street Leasing contained in the Loan Agreements, or exhibits thereto, which may result from the assignment by duPont to Walston of the leases attached to the loan agreements.

This Amendatory Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, executors, administrators, legal representatives and assigns. Except as

may be otherwise reflected herein, the Loan Agreements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendatory Agreement to be duly executed as of the day and year first above written.

THE WALL STREET LEASING CORPORATION

By: M. A. HART III

CHEMICAL BANK NEW YORK TRUST COMPANY

By: BRUCE T. MUDDELL

[CONFORMED COPY]

EXHIBIT 11
to
Master Agreement

FIRST AMENDMENT
To
CSI 2d AGREEMENT

AMENDATORY AGREEMENT, dated as of the 2nd day of July, 1973, by and between PHM & Co. ("PHM"), a limited partnership organized under the laws of the State of Texas, and DUPONT GLORE FORGAN INCORPORATED ("DGF"), a Delaware corporation.

WHEREAS, PHM and DGF have entered into an agreement (the "Agreement"), dated April 6, 1972, pursuant to which PHM delivered to DGF a $15 million secured, demand, non-recourse note issued by PHM to DGF, which note was secured by a letter of credit, in exchange for DGF's delivery to PHM of a Certificate of Special Interest, Second Series; and

WHEREAS, the aforesaid Agreement contemplates the establishment by DGF of 150,000 shares of DGF Series Three Preferred Stock, par value $1.00 per share, by the filing of a certificate with the Secretary of State of the State of Delaware pursuant to Section 151(g) of the Delaware General Corporation Law, which certificate, by agreement between the parties, will be filed as of the date of this Amendatory Agreement with the amendment described in Section 2 hereof contained therein; and

WHEREAS, the parties hereto desire to amend the aforesaid Agreement and certain of the terms of the certificate annexed thereto as Exhibit B;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. Section 3.B. of the Agreement is hereby amended in its entirety to read as follows:

"B. *Yield.* The CSI 2d shall not bear any interest or yield unless and until payment of all or a part of the PHM Note is made, in which event the CSI 2d shall bear a yield on the Yield Base as

it shall exist from time to time. Such yield shall be at a rate of 2% per annum above the prime commercial lending rate of the bank issuing the Letter of Credit, with each change in such yield resulting from a change in such prime commercial lending rate to become effective on the business day on which such prime commercial lending rate changes."

2. Paragraph 5(a) of the Certificate of Resolutions Creating Series Three Preferred Stock of duPont Glore Forgan Incorporated, which is Exhibit B to the Agreement, is hereby amended in its entirety to read as follows:

"5. CONVERSION OF SERIES THREE PREFERRED STOCK.

(a) *Conversion Privilege: Conversion Rate.* Upon the terms and in the manner hereinafter set forth in this paragraph 5, any holder of shares of the Series Three Preferred Stock may, at the option of such holder, convert any or all of such shares into shares of the Class A Common Stock of the corporation at the rate of fifty (50) shares of such Class A Common Stock for each share of the Series Three Preferred Stock (such rate being based upon an intial conversion price per share of Class A Common Stock of $2.00), subject to adjustment as hereinafter provided, such right of conversion to be exercisable at any time and from time to time."

3. In all other respects, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendatory Agreement as of the date first above written.

PHM & Co.

By H. R. PEROT
General Partner

duPONT GLORE FORGAN INCORPORATED

By MORTON MEYERSON

[CONFORMED COPY]

EXHIBIT 12
to
Master Agreement

LETTER AGREEMENT

WALSTON & CO., INC. ("Walston")
77 Water Street
New York, N. Y. 10005

July 2, 1973

DUPONT GLORE FORGAN INCORPORATED ("duPont")
77 Water Street
New York, N. Y. 10005

PHM & Co. ("PHM")
1300 EDS Center
Exchange Park
Dallas, Texas 75235

Gentlemen:

This letter confirms our agreement respecting the principles and procedures to be followed with respect to the future acquisition of securities of Walston and duPont. We have agreed in principle to the following:

A. Walston shall have the right to acquire from PHM and/or from duPont such number of shares of duPont's common stock as shall give Walston a common stock interest in duPont equal to 1/10 of 1% less than PHM's common stock interest (expressed as a percentage of all outstanding common stock) in duPont. In any such acquisition Walston shall be required to purchase, at the face value thereof, an amount of duPont subordinated debt held by the Perot Interests, with the objective that Walston and the Perot Interests shall each own at any given time substantially the same proportion of duPont debt to duPont equity. duPont debt for this purpose shall include debt capital furnished or otherwise made available by third parties, if such debt is endorsed, guaranteed or collateralized by PHM or H. Ross Perot.

B. The parties will promptly explore the feasibility (without adverse tax consequences to them or their shareholders) of causing duPont to organize a corporate subsidiary to provide the

type of services contemplated by the Clearing Agreement and if such is feasible, duPont will cause such a subsidiary to be formed. In that event the right to purchase the equity interest referred to above shall be applicable to the equity of such subsidiary rather than in duPont.

C. Perot Interests (meaning PHM, Charleston Investment Company, H. Ross Perot and other persons or entities affiliated with each of them) shall have the right to acquire a 55% equity interest in Walston.

In order to implement the foregoing objectives, the parties agree as follows:

1. The investment banking firm of Morgan Stanley & Co. Incorporated or other firm acceptable to the parties hereto ("Investment Banker") shall undertake a study of the financial condition, capital structures, liabilities (actual and contingent) and all other relevant factors relating to duPont and Walston and shall make a written recommendation to the parties as to one or more methods by which the objectives defined above can be achieved. Such recommendation will be made after consultation with the parties hereto and their respective counsel and shall take into consideration the interests of all parties. The Investment Banker in recommending the purchase price and other terms upon which such objectives can be achieved shall also take into account the valuation of competitive firms in the industry in relation to their book value and market value; tax considerations; and any unique factors, including the liabilities referred to above, inherent in the respective businesses of duPont or Walston. No value will be attributed to the voting rights of the Walston Series B Convertible Preferred Stock owned by Charleston Investment Company.

2. Upon receipt of the recommendation of the Investment Banker, the parties shall negotiate in good faith, seeking to implement the arrangements contained in such recommendations.

3. In the event that the parties fail to conclude mutually satisfactory arrangements with respect to these matters by June

30, 1974, the Clearing Agreement shall be amended in order to implement profit participations with the following economic effect and pursuant to the following procedures:

(a) Walston shall be entitled to the economic benefit of such percentage of the after-tax profits of duPont (or its service subsidiary if formed) for each year for the entire term of the Clearing Agreement as is equal to 1/10 of 1% less than PHM's common stock interest in duPont (expressed as a percentage of all outstanding common stock), and duPont shall be entitled to the economic benefit of 55% of the after-tax profits of Walston for the same period. Such payments shall constitute additional consideration for the arrangements contemplated by the Clearing Agreement and for the transfer of assets under the Transfer Agreement from duPont to Walston.

(b) The Investment Banker shall make a final and binding determination as to the formula for implementing such after-tax profits participation in accordance with the terms hereof.

(c) In the event that such Investment Banker fails or refuses to make such determination, each party shall promptly select one person and such persons shall designate a third person and they shall constitute a board of arbitration to make such final and binding determination.

4. The expenses and compensation of the Investment Banker and of any board of arbitration shall be shared equally by duPont and Walston.

5. Each party agrees to effect such amendments to its certificate of incorporation, including the reduction of the par value of any class of its authorized capital stock, or the authorization of any new class of capital stock, as may be necessary to effectuate the recommendations of the Investment Banker.

6. Whenever in this letter agreement there is a reference to a decision to be made by the parties, with respect to Walston, the decision shall be made by those of its directors who were not directors, officers, employees or stockholders of duPont prior to July 2, 1973.

7. Nothing in this letter agreement is intended to or shall have the effect of precluding the conduct of the study described in Section 1.2 of the Master Agreement.

Kindly confirm your agreement to the foregoing by signing below at the place indicated.

Very truly yours,

WALSTON & Co., INC.

By G. T. THOMSON

Agreed:

DUPONT GLORE FORGAN INCORPORATED

By MORTON MEYERSON

PHM & Co.

By H. R. PEROT

[CONFORMED COPY]

EXHIBIT 13
to
Master Agreement

PARI PASSU AGREEMENT

AGREEMENT, dated as of July 2, 1973, by and among WALSTON & Co., INC., a Delaware corporation ("Walston"), DUPONT GLORE FORGAN INCORPORATED, a Delaware corporation ("DGF Inc."), PHM & Co., a Texas limited partnership ("PHM"), and H. R. PEROT ("Perot").

WITNESSETH:

WHEREAS, Walston, DGF Inc. and PHM are parties to an agreement designated as the Capital Agreement, dated as of July 2, 1973; and

WHEREAS, pursuant to the Capital Agreement, on July 2, 1973, DGF Inc. sold to Walston DGF Inc.'s Senior Subordinated Debenture due June 30, 1983 in the principal amount of $8,600,000 (the "DGF Debenture"); and

WHEREAS, the DGF Debenture provides that claims thereunder shall rank *pari passu* with the subordinated claims of PHM and Perot described below;

NOW, THEREFORE, in consideration of the premises:

1. PHM agrees with DGF Inc. and Walston that Walston's claims under the DGF Debenture shall rank *pari passu* with the claims of PHM against DGF Inc. arising under DGF Inc.'s Registered Senior Subordinated Debenture, No. 3, dated March 29, 1973 in the initial principal amount of $23,500,000 and under the Secured Demand Note Collateral Agreement between PHM and DGF Inc. dated March 29, 1973, as the same may from time to time be amended.

2. Perot agrees with DGF Inc. and Walston that Walston's claims under the DGF Debenture shall rank *pari passu* with the claims of Perot

against DGF Inc. arising under the agreement dated April 6, 1972 between Perot and DGF Inc. respecting the collateralization of the debit balance in the Acquisition Settlement Account maintained on DGF Inc.'s books as such agreement may from time to time be amended.

3. Walston and PHM agree with Perot that his claims against DGF Inc. described in Section 2 above shall rank *pari passu* with their claims against DGF Inc. described in Section 1 above.

IN WITNESS WHEREOF, the parties have caused their signature to be affixed hereto this 2nd day of July, 1973.

PHM & Co.

By: H. R. PEROT
General Partner

DUPONT GLORE FORGAN INCORPORATED

By: MORTON MEYERSON

WALSTON & CO., INC.

By: G. T. THOMSON

H. R. PEROT
H. R. PEROT

[COMPOSITE CONFORMED COPY]

EXHIBIT 14
to
Master Agreement

VOTING AGREEMENT

CHARLESTON INVESTMENT COMPANY
1300 EDS Center
Exchange Park
Dallas, Texas 75235

July 2, 1973

To the Stockholders of Walston & Co., Inc. Listed in Annex A

Dear Sirs:

Reference is made to the Master Agreement, dated as of the date hereof, among PHM & Co., a Texas limited partnership, duPont Glore Forgan Incorporated, a Delaware corporation ("DGF"), Walston & Co., Inc., a Delaware corporation ("Walston") and Charleston Investment Company, a Delaware corporation ("Charleston"), with respect to the realignment of the businesses of DGF and Walston. Pursuant to such Master Agreement, Charleston has this day exchanged 398,803 shares of the Series A Convertible Preferred Stock, par value $5 per share, of Walston (which shares do not have voting rights) for 398,803 shares of the Series B Convertible Preferred Stock, par value $5 per share, of Walston ("Series B Shares"). The voting rights of the Series B Shares are such that Charleston has a majority of the votes attributable to all outstanding capital stock of Walston.

In consideration of the premises and the mutual covenants herein contained, Charleston has this day agreed with you as follows:

1. Until the happening of the earliest of (i) the expiration of ten years from the date hereof, (ii) the time of effectiveness of the class voting provisions referred to in Section 3, (iii) the date of termination of the Clearing and Related Services Agreement, dated as of July 2, 1973, as amended from time to time, between Walston and DGF, or (iv) the time when the Series B Shares no longer have general voting rights Charleston will on and after the date hereof vote its Series B Shares at any meeting at which the members of the Board of Directors of Walston (the "Walston Board") are to be elected, so that following any such vote, the Walston Board will include the members nominated (the "Walston Nominees") by the Walston Designating Committee (as hereinafter defined); the number of Walston Nominees relative to the total number of Directors on the Board of Directors shall be determined in accordance with the formula set forth in Section 3 hereof.

2. The members of the Walston Board as constituted on July 1, 1973 who remain members of the Walston Board after July 2, 1973 (excluding William K. Gayden and Mervin L. Stauffer) have appointed a designating committee consisting of four members (the "Walston Designating Committee"). Any vacancy in the Walston Designating Committee shall be filled by a majority of the remaining members. Each member of the Walston Designating Committee shall at all times be either (a) a member of the Walston Board or (b) an employee of Walston, provided that at least one member of the Walston Designating Committee shall be a member of the Walston Board. The Walston Designating Committee shall only nominate as Walston Nominees persons who are either (a) then members of the Walston Board or (b) employees of Walston or (c) other persons, all of whom shall be reasonably acceptable to Charleston (which acceptance shall be indicated in writing by the President or any Vice President of Charleston addressed to the Walston Designating Committee).

From the date hereof until the time the class voting provisions of Section 3 become effective: nominations by the Walston Designating Committee will be based upon the majority vote of the Walston Designating Committee; Charleston shall cause written notice to be given to the Walston Designating Committee of any shareholders' meeting at which the members of the Walston Board are to be elected at least 90 days prior to the scheduled meeting date; the then incumbent Walston Designating Committee shall give written notice to Charleston of its nominees for election to the Walston Board at least 65 days prior to the scheduled meeting; and in the event of the death, resignation or removal of a member of the Walston Board who was nominated by the Walston Designating Committee, Charleston shall use its best efforts to cause his successor to be the nominee of the Walston Designating Committee. Notice can be furnished less than 90 days prior to the scheduled meeting date so long as the Walston Designating Committee has at least 25 days (or such lesser period as it may require) within which to make its designation hereunder.

3. Charleston agrees to vote its Series B Shares at the next meeting of the stockholders of Walston to be held (or action to be taken by the stockholders of Walston in lieu of a meeting) for a Certificate of Amendment of the Certificate of Incorporation of Walston to the effect that, for a period of four (4) years from the date of filing thereof, (i) the holders of Series B Shares shall be entitled to vote as a class only to elect 13 of the 24 Directors of Walston or to elect such greater or lesser number of the Directors of Walston which is as nearly as is practicable, proportionate to thirteen-twenty-fourths (but rounded to the higher whole number) of the total number of the Directors of Walston if that number shall be more or less than 24 and (ii) the holders of Common Stock

("Common Stock") shall be entitled to vote as a class only to elect 11 of the 24 Directors of Walston or to elect such greater or lesser number of Directors of Walston which is as nearly as is practicable proportionate to eleven-twenty-fourths (but rounded to the higher whole number) of the total number of the Directors of Walston if that number shall be more or less than 24 and which nominees for the Board of Directors shall each be reasonably acceptable to Charleston (which acceptance shall be indicated in writing by the President of Charleston addressed to the Walston Designating Committee) and be either (a) employees of Walston at the time or (b) members of the Executive Committee of the Board of Directors of Walston as of July 2, 1973.

4. It is agreed that Charleston's rights under Section 9.A. (3)(i) of the Purchase Agreement, dated July 5, 1972, between Walston and Charleston, as amended, shall not increase the number of Directors of Walston which Charleston is entitled to elect pursuant to the foregoing.

5. In the event that the Series B Shares no longer have or cannot exercise general voting rights, each of the signatory stockholders to this Agreement confirms that he will use his best efforts and otherwise vote his shares of stock of Walston in order to implement the provisions of Section 3 hereof, namely, that thirteen of the twenty-four Directors of Walston (or such greater or lesser number of Directors as is set forth in Section 3) shall be designated by Charleston and eleven of the twenty-four Directors of Walston (or such greater or lesser number of Directors as is as nearly as practicable proportionate to eleven-twenty-fourths) shall be designated by Walston's Designating Committee, or if there is no such committee at such time, by the holders of the common stock of Walston.

6. In the event that the Series B Shares no longer have or cannot exercise general voting rights, the class voting arrangement provided in Section 3 hereof shall provide that for the term provided in Paragraph II of the Certificate filed pursuant to Section 151 of the General Corporation Law of the State of Delaware authorizing the Series B Shares, the holders of the Series B Shares shall be entitled to vote only as required by law or for the election as a class of thirteen of the twenty-four Directors of Walston (or such greater or lesser number of Directors as is as nearly as practicable proportionate to thirteen-twenty-fourths as set forth in Section 3).

This Agreement is for the benefit of all holders of Walston Common Stock on the date hereof and from time to time on whose behalf you are acting in connection therewith, and for the benefit of Charleston and its assigns.

Charleston is entitled to rely on all written actions and determinations furnished from time to time by the Walston Designating Committee, and that Committee is entitled to rely on all written actions and determinations furnished from time to time by Charleston.

The terms of this Agreement may be amended in writing only upon the concurrence of the holders of sixty-six and two-thirds percent (66⅔%) of the outstanding Series B Shares and a majority of the Walston Designating Committee as constituted at the time of any such amendment.

Any correspondence with or notice to Charleston shall be sent to the address above written unless Charleston informs you otherwise.

The Walston Designating Committee shall from time to time inform Charleston of the addressee of notices to be sent to such committee.

Please confirm this Agreement by signing where indicated below.

Very truly yours,

CHARLESTON INVESTMENT COMPANY

By: MERVIN L. STAUFFER

Confirmed as of July 2, 1973:

CHARLES W. COX
(Stockholder)

G. T. THOMSON
(Stockholder)

D. J. CULLEN
(Stockholder)

W. D. FLEMING
(Stockholder)

ANNEX A

ANNEX A TO VOTING AGREEMENT

Name	Address
Charles W. Cox	77 Water Street New York, New York
G. T. Thomson	77 Water Street New York, New York
D. J. Cullen	265 Montgomery Street San Francisco, Calif.
W. D. Fleming	77 Water Street New York, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : I. C. Part 9

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HOWARD C. HIRSCH, PAUL L. KOHNS and
MARSHALL S. MUNDHEIM,

Plaintiffs,

Index No.
11514/72

-against-

F. I. duPONT, GLORE FORGAN & CO.,
(a partnership in liquidation),
duPONT GLORE FORGAN INCORPORATED
and PHMFG CORPORATION,

Defendants.

----------x

ARNOLD L. FEIN, J.:

Defendants, duPont, Glore Forgan Incorporated (DFG, Inc.) and PHMFG Corporation (PHMFG) move for an order staying this action and directing plaintiffs to proceed to arbitration with respect to the claims asserted in the complaint.

Plaintiff Hirsch cross-moves for summary judgment on the first cause of action and plaintiffs Kohns and Mundheim cross-move for judgment on the third and fifth causes of action.

The action is grounded upon the alleged breach of three subordinated loan agreements, all dated January 4, 1971, between plaintiffs and defendant F. I. duPont, Glore Forgan & Co., a partnership (FIDGF). Plaintiff Hirsch claims that there is due him the sum of $300,000 plus interest from July 1, 1972 under the First Cause of Action. Plaintiffs Kohns and Mundheim

assert that they are entitled to judgment on the basis of the loan agreements under the Third and Fifth Causes of Action but that an assessment of damages is required to ascertain the extent of their damages.

Plaintiffs object to arbitration on the ground that the claims asserted against defendants are not subject of an arbitration agreement and, alternatively, that arbitration as demanded by defendants before the New York Stock Exchange (NYSE) would be prejudicial and against public policy.

Prior to July 2, 1970, plaintiffs were partners of the brokerage firm Hirsch & Co., a dissolved limited partnership presently in liquidation, formerly a member of the NYSE.

Defendant FIDGF, a New York partnership, now in liquidation, is the successor entity to Francis I. DuPont & Co. (the duPont partnership), a brokerage firm formerly engaged in the securities business, which in July 1970 acquired certain Hirsch & Co. assets and assumed certain Hirsch & Co. liabilities. Defendant DGF, Inc. was formed to purchase the assets and assume certain liabilities of defendant FIDGF, including the obligations allegedly created by the subordinated loan agreements. Defendant PHMFG is purportedly the major stockholder of DGF, Inc. and allegedly approved and ratified the subordinated loan agreements.

Defendants contend that by virtue of the relationship between plaintiffs and FIDGF and certain prior agreements executed by the parties, plaintiffs' claims are subject to arbitration. The issue is the applicability of those prior agreements and the arbitration clause contained therein to the circumstances which occurred subsequent to their execution. It is manifest that the relationship between plaintiffs and defendants DGF, Inc. and PHMFG and the subordinated loan agreements sued upon spring from the acquisition of Hirsch & Co. firm by FIDGF.

By agreement dated July 2, 1970, (July Agreement), the duPont partnership which then became FIDGF, acquired certain assets and assumed certain liabilities of Hirsch & Co. Plaintiffs Kohns and Mundheim became general partners of FIDGF and Hirsch a limited partner. This agreement required plaintiffs and other Hirsch partners to contribute certain general and limited capital to the duPont firm.

Paragraph 12 of the July Agreement provided that plaintiffs ("Any Hirsch General Partner or Hirsch Limited Partner * * *") could withdraw their capital contributions on or before December 31, 1970 by appropriate notice to the Executive Committee of the reorganized partnership.

Paragraph 6(e) of the July Agreement established a formula for the division or computation of profit and losses among partners, stating in part:

> "Any individual who * * becomes a partner of duPont hereunder will not participate in or be responsible for any losses of duPont * * realized after the Closing Date arising out of the operation of duPont's business prior to the Closing Date, nor will he participate in any recoveries realized with respect thereto after the Closing Date."

Paragraph 16 of the July Agreement provided for arbitration:

> "Anything herein contained to the contrary notwithstanding any controversy or claim arising out of or relating to this agreement, or breach thereof, shall be settled by arbitration in accordance with the Constitution and Rules of the New York Stock Exchange, and if for any reason such arbitration proceedings cannot be held then any controversy or claim arising out of or relating to this agreement, or any breach hereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and such arbitration shall be held in the City and State of New York."

Defendants rely upon this clause as the basis of their contention that plaintiffs must arbitrate their claims.

Simultaneously with the execution of the July Agreement, amended Articles of Limited Partnership of FIDGF were adopted, binding the plaintiffs and other partners. Articles 11 and 14 of the Articles of Limited Partnership related to the division of profits and losses among the partnership members. Article Twenty-first provided for arbitration of "disputes among partners concerning the interpretation of these partnership articles * * * before The Board of Arbitration of the New York Stock Exchange."

Sometime prior to December 1, 1970, plaintiffs elected to withdraw their respective capital contributions from the firm. This led to the execution of an agreement dated December 14, 1970 (December Agreement), effective December 31, 1970, whereby the existing general and limited capital contributions of plaintiffs were to be transformed into subordinated loans to FIDGF. In the December Agreement the parties acknowledged the existence of the July Agreement and agreed to "any amendment of" the July Agreement "to the extent necessary" to accomplish the purposes of the December Agreement. This transaction was ultimately consummated by the execution of three subordinated loan agreements with plaintiffs, dated January 4, 1971, upon which this action is grounded.

The ultimate issue to be resolved, either by this court or by arbitration, is whether plaintiffs are entitled to a return of all or any part of their capital contributions, converted into subordinated loans pursuant to the January 4, 1971 agreements. Resolution of this issue turns on what "losses" if any are chargeable against plaintiffs' accounts, whether denominated capital contributions or loans. Put another way, was the obligation to Hirsch fixed at $300,000 and the obligations to Kohn and Mundheim fixed subject only to "operating losses" during the period July 2, 1970 to December 31, 1970? Were these obligations subject to proof that plaintiffs actually had a capital account as of December 31, 1970?

Plaintiffs concede that the July Agreement and the FIDGF limited Articles of Partnership provide for arbitration. However, they contend that: (1) the claims asserted in the complaint do not relate to and are not governed by the arbitration clauses set forth in these prior agreements; (2) neither the December Agreement which provided for the transformation of plaintiffs' capital contributions into loans nor the subordinated loan agreements contain an arbitration clause; and (3) the subordinated loan agreements are independent contracts fixing their rights enforceable at law and not subject to arbitration.

Such interpretation would require a narrow construction of the underlying transactions between the parties which led to the execution of the subordination agreements.

It is undisputed that the subordination agreements came about as a direct result of the desire of plaintiffs to withdraw their capital from FIDGF. In December 1970, within the period provided in the July Agreement, each plaintiff exercised his right to withdraw as a partner of FIDGF and demanded the return of capital. While plaintiffs had every right to withdraw the amount of capital that could be returned to them, this was dependent upon the losses incurred by the partnership attributable to the period plaintiffs maintained their partnership status and the financial condition of FIDGF insofar as the withdrawal of capital might cause a violation of any applicable NYSE rule.

At the time plaintiffs sought to withdraw, if a dispute arose as to the amount of capital to be returned to plaintiffs, either side could have demanded arbitration, by virtue of the arbitration clauses in the July Agreement, the amended Articles Limited Partnership, and Article VIII, Section I of the Constitution of the New York Stock Exchange:

> "Any controversy between parties who are members, allied members, member firms or member corporations shall, at the instance of any such party, and any controversy between a non-member and a member or allied member or member firm or member corporation arising out of the business of such member, allied member, member firm or member corporation, or the dissolution of a member firm or member corporation, shall, at the instance of such non-member, be submitted for arbitration, in accordance with the provisions of the Constitution and the rules of the Board of Directors."

In December 1970, plaintiffs Kohns and Mundheim were admittedly members of the Exchange by virtue of their status as general partners of FIDGF. Plaintiff Hirsch, or FIDGF could have demanded arbitration because FIDGF was a member of the NYSE.

Plaintiffs have failed to demonstrate that by execution of the December Agreement or the January 4, 1971 subordinated loan agreements the parties intended to surrender their right to arbitration.

It is manifest that in December 1970 FIDGF was in dire need of financial assistance. PHMFG was willing to advance

capital to FIDGF but not for the purpose of immediately repaying the capital advanced by the Hirsch partners, including plaintiffs. Plaintiffs were implored not only by FIDGF but, as they contend, by the NYSE to withhold the withdrawal of their capital. Their agreement and consent so to do was embodied in the December Agreement and the January 4, 1971 agreements. Contrary to plaintiffs' contention, the January 4, 1971, agreements cannot be read in isolation.

The events, circumstances and agreements executed after the July Agreement are not separate and independent transactions each standing on its own footing. All of the agreements must be considered and viewed together as part of a continuing and ongoing transaction, the agreements modifying each other to correspond with new developments in the relationship among the parties. The arbitration clause was part of the changing pattern. (Matter of Microtran Company, 30 A D 2d 938; Matter of O'Connell and DeWitt, 15 A D 2d 758; Matter of Nat'l. Cash Register (DeWitt) 7 A D 2d 550).

Plaintiffs' argument that DGF, Inc. and PHMFG were not parties to the July Agreement, and therefore lack standing to enforce the Arbitration Clause provided therein, lacks merit. The action insofar as it is directed against DGF, Inc. is based upon the subordinated loan agreements. Defendant PHMFG is allegedly a signatory to the December Agreement, and is thereby

contractually obligated to perform under the subordinated loan agreements. To the extent that these defendants may be held to have assumed the obligations previously incurred by FIDGF to repay plaintiffs' capital, such obligation must necessarily carry with it an assignment of rights possessed by defendants' predecessors in interest. (Cf. Matter of Lyman, 289 N Y 76, holding that an assignee may invoke the arbitration clause contained in the original agreement).

Plaintiffs contend that NYSE cannot be the arbitration forum to resolve their claims because:

(1) NYSE took part in the refinancing and reorganization of FIDGF:

(2) a companion action has been instituted against NYSE and the defendants, in the Federal District Court, relating to the subject matter of this action;

(3) the NYSE agreement to indemnify DGF up to fifteen million ($15,000,000) dollars in losses occurring prior to this refinancing would cause NYSE to be partial in favor of the defendants.

It is unnecessary, and would serve no useful purpose, to examine in minute detail the factual averments raised regarding the propriety of the NYSE as the forum to hear and resolve this controversy. It is sufficient to note that an arbitration tribunal must not only be unbiased but must also avoid even the slightest appearance of bias (Mtr. of Stevens & Co. (Rytex Corp.) 41 A D 2d 15, 18). Moreover, as stated in Commonwealth Corp. v. Casualty Co., 393 U.S. 145, at pp. 148-149:

> "It is true that arbitrators cannot sever all their ties with the business world, since they are not expected to get all their income from their work deciding cases, but we should, if anything, be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the laws as well as the facts and are not subject to appellate review."

The July Agreement provides that if for any reason arbitration proceedings could not be held before the NYSE, then the dispute should be resolved in accordance with the Rules of the American Arbitration Association in New York City. Under the circumstances arbitration under the American Arbitration Association Rules and Procedures is appropriate.

Granting defendants' motion to compel arbitration of the pleaded causes forecloses consideration of plaintiffs' cross-motion for summary judgment. However, it should be noted that the motion is procedurally defective and also raises factual issues which would require exploration by a plenary trial in any event.

Plaintiffs served their cross-motion for summary judgment prior to service of defendants' answers. Weighing the conflicting arguments as to why an answer was not served would serve no useful purpose. Plaintiffs unequivocally rest their motion on CPLR 3212 and not upon the failure of defendants to answer. It is clear that defendants would

desire to interpose an answer if arbitration were not directed. The procedural incongruity arose because of the failure of defendants to seek an interim stay of the action until determination of their motion to compel arbitration. The parties have chosen their own procedure. The court will accord it recognition under the circumstances.

CPLR 3212 permits a motion for summary judgment to be made only "after issue has been joined". Accordingly, plaintiffs' cross-motion is procedurally premature. Moreover, the cross-motion does not qualify as one for judgment on an instrument for the payment of money because (1) plaintiffs served a long form complaint; (2) a determination of plaintiffs' right to recover depends upon proof of facts outside of the instruments; and (3) the factual issues raised by defendants, albeit by affidavits, regarding the underlying transactions which preceded the execution of the subordinated agree s.

Defendants allege that the claimed obligations under the subordination agreements are void upon the ground of mutual mistake or fraud. This contention is premised on their assertion that at the time the subordination agreements were executed, plaintiffs had no existing capital in FIDGF, because of losses which had been incurred. Although the defense may be dubious in view of the fact that each of the parties had an equal

opportunity to ascertain the financial status of FIDGF, it is evident that plaintiffs' claims were subordinated to the claims of creditors of FIDGF, who have not been paid. Such issues cannot be resolved on the papers now before the court but would require a plenary trial. So too is the question of what "losses" are properly to be considered, if any.

Underlying these issues is the question whether the agreements sued upon were predicated upon the existence of plaintiffs' general and limited capital, as defendants contend, or whether the January Agreements amounted to a fixation of such accounts as plaintiffs argue.

Accordingly, defendants' motion to compel arbitration is granted, the action is stayed and the cross-motion for summary judgment is denied.

Settle order, providing for arbitration under the Rules of the American Arbitration Association.

Dated: February 1, 1974

/s/ A L F

J.S.C.

SUPREME COURT : NEW YORK COUNTY

SPECIAL TERM : PART I

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ROBERT J. FRAIMAN,

Petitioner

Index No. 23712/1972

-against-

F. I. DUPONT, GLORE FORGAN & CO., a partnership in liquidation, and DUPONT GLORE FORGAN INCORPORATED,

Respondents

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GELLINOFF, J.:

This is an application to stay arbitration before the Board of Arbitration of the New York Stock Exchange. Petitioner contends that the Board is disqualified from serving on the ground that its panels, composed of members of the Exchange, have a direct financial interest in the outcome of the dispute between the parties.

In the demand for arbitration it is claimed that petitioner joined respondent F. I. duPont, Glore Forgan & Co. as a general partner on July 2, 1970, with a capital contribution consisting of a note for $230,000, and that his assigned percentage of profits and losses was 1.765%. It is claimed that during the time that petitioner was a partner, the partnership "suffered huge financial losses", and, in fact,

had "exhausted all of its general partner capital by the time that [petitioner] retired in December of 1970." Nevertheless, respondents assert, petitioner has failed to pay his contribution of $230,000. Petitioner denies liability.

Since respondents and petitioner are members of the New York Stock Exchange, respondents have demanded arbitration before the Board of Arbitration, as required by the rules of the Exchange.

Petitioner points to an agreement whereunder, to facilitate the liquidation of respondent partnership, the Stock Exchange agreed to indemnify respondent corporation for all losses sustained by the partnership, up to a maximum of $15,000,000. Under the agreement, the funds for the indemnification are to be furnished through a special assessment of all members of the Exchange. Since the members of the Board of Arbitration are all members of the Exchange, petitioner asserts that the more the arbitrators find petitioner must pay respondents, the less the arbitrators themselves will have to pay in the assessment; therefore, urges petitioner, the arbitrators obviously cannot be impartial on the question of petitioner's liability.

Respondents contend that the interest of the arbitrators shown by petitioner is not sufficient to warrant staying the demanded arbitration. The unreported cases on

which they rely, however, are inapposite. Those cases involved disputes between members and non-members of the Exchange, in which arbitration is not held by the Board of Arbitration, but before panels selected by the Exchange, but not necessarily composed of members of the Exchange. Also, in those cases, the financial interest of the members of the Exchange was only indirectly involved. Indeed, even in one of those cases, the court was sufficiently convinced of the possibility of partiality that it prohibited the usual Stock Exchange arbitration procedure, and itself appointed one of the arbitrators [Klebanow v. Ira Haupt & Co., Index No. 1105-64 (Sup. Ct., N.Y. Co. 1964)].

Respondents further contend that in any event the arbitrators will have no financial interest in the outcome of the arbitration since "most probably" the Exchange members will be assessed the entire $15,000,000. without regard to the amount that may become due respondents as the result of the arbitration. Such an equivocal, speculative assertion does not warrant the conclusion that the arbitrators will be impartial.

Moreover, it also appears that the members of the Exchange have other interests which would tend to encourage them to be partial to respondent. Litigation is pending against the Exchange, commenced by various of petitioner's

former associates similarly situated, which would be affected by the outcome of the proposed arbitration. Additionally the Excnange, pursuant to its agreement with respondent corporation, possesses rights to purchase stock in respondent corporation, amounting to some 8% of the outstanding stock. The position of the Exchange would be improved if respondent obtained a favorable award.

Contrary to respondents' argument, this application is not premature. The court ought not require petitioner to expend the effort and cost of a protracted proceeding before permitting him to challenge the composition of the arbitration panel [Matter of Astoria Medical Group, 11 N Y 2d 128, 132 (1962)].

Accordingly, mindful of the recent admonition by the Appellate Division of this Department that "an arbitration tribunal must not only be unbiased, but must also avoid even the slightest appearance of bias" [J. P. Stevens & Co., Inc. v. Rytex, _____ A D 2d _____, N.Y.L.J., March 14, 1973, p. 1, col. 8 (1st Dept. February 22, 1973)], the court must stay arbitration before the Board of Arbitration of the New York Stock Exchange.

The record in this proceeding amply demonstrates that the parties intended that any disputes between them be settled by some form of arbitration, and that they not be

relegated to judicial proceedings. Many different agreements were entered into between the various parties involved in this matter, all of which provided for arbitration, and at least one of which provided for an alternate forum for arbitration should the Stock Exchange be deemed inappropriate. It is clear from these documents that the parties intended to arbitrate, preferrably before the Stock Exchange, but, if that was not practicable, then before some other forum.

Accordingly, the court concurs with respondents that "the proper remedy", should the court find the proposed arbitrators to be biased, "would be to have this Court appoint an alternate pursuant to CPLR 7504" [Respondents' Memorandum, p. 19]. The court will therefore appoint an arbitrator.

Settle order accordingly.

Dated: March 15, 1973

/s/ A J G

J. S. C.

SUPREME COURT : NEW YORK COUNTY

SPECIAL TERM : PART I

- x

BERNARD KLEBANOW and GEORGE LEWIS,

Plaintiffs,

-against-

Index No. 1105/64

IRA HAUPT & CO, and MORTON KAMERMAN, individually and as Liquidating Trustee for the Benefit of Ira Haupt & Co.

Defendants.

- x

Gold, J.:

This is a motion by defendants, Ira Haupt & Co. (hereinafter referred to as "Haupt") and Morton Kamerman, to dismiss the complaint, or, in the alternative, to stay the prosecution of this action and direct the parties to proceed to arbitration. The ground of the motion is that a valid agreement between the parties requires arbitration of the claim set out in the complaint.

The action is brought by two of the limited partners of Haupt for an accounting of the partnership affairs, the distribution of the partnership property, and the appointment of a receiver. The complaint alleges that Kamerman, the managing partner of Haupt, was the sole liquidating trustee under the terms of the partnership agreement, and that he, in

violation of the agreement, improperly appointed one Mahony, representing the New York Stock Exchange and certain bank creditors of the partnership, to conduct the liquidation. Plaintiffs allege that, because of Kamerman's improper delegation of his duties and various acts of Mahony, they are entitled to the relief sought in the complaint.

The partnership agreement contains a provision reading as follows:

> "41. Arbitration. Any and all disputes or controversies between the parties hereto or any of them shall be determined by arbitration before the appropriate tribunal therefor designated by the New York Stock Exchange in accordance with the Constitution and By-Laws and rules and regulations of the said New York Stock Exchange. Similarly, any and all disputes or controversies between any of the parties hereto and the personal representatives or Committee or any other party hereto shall be deemed a controversy between the parties and shall be determined by arbitration as provided for in this paragraph. Judgment upon the award may be entered in any court of competent jurisdiction."

Clearly plaintiffs' claim that Kamerman's delegation of powers to Mahony violated the partnership agreement, which defendants dispute, presents an arbitrable issue under the broad language of paragraph 41, supra, which encompasses "any and all disputes or controversies between the parties". Section 7501, CPLR,

expressly provides that the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute. The question of whether defendants' claim that Kamerman had the right to delegate his authority to Mahony is tenable is, under said provision, not to be considered by the court.

Plaintiffs contend that the provisions of the New York Stock Exchange Constitution for arbitration of controversies do not apply because Haupt ceased to be a member when it was suspended by the Exchange in November, 1963. The arbitration application is, however, not based upon the provisions of the Constitution but rather upon the express agreement to arbitrate contained in the partnership contract. Furthermore, an affidavit submitted by the Secretary of the Exchange states that the suspension merely related to the right of Haupt to transact business on the floor of the Exchange and did not affect Haupt's right to seek arbitration.

Plaintiffs urge that arbitration will not provide an adequate remedy because it will not give them the receivership relief which they seek in the action brought by them. If, however, the arbitrators should determine that the delegation to Mahony of authority to liquidate did not violate the partnership agreement, plaintiffs would not be entitled to a temporary receiver. The Appellate Division in this department, in Simon

v. Vogel, 9 A D 2d 63, said: "Our conclusion that the action must be stayed in and of itself, effectively precludes appointment of a receiver pendente lite in this action" (Emphasis supplied).

Plaintiffs' contention that "non-members" of the Exchange, such as plaintiffs, are not required by the Exchange's Constitution to resort to arbitration, although they may do so, has no application here, for the arbitration is sought on the basis of plaintiffs' express agreement to arbitrate and is not based on the provisions of the Constitution.

Under the provisions of the Exchange's Constitution, a controversy, such as the present one, must be submitted to five arbitrators to be selected by lot by the Exchange's Arbitration Director: one from the Exchange's Board of Arbitration, one from the first of two panels appointed from time to time by the Chairman of the Board of Governors, and three from the second of said panels. At the election of plaintiffs, all five arbitrators may be chosen from the members of the Board of Arbitration. Plaintiffs claim that the Exchange and its members are disqualified from designating the arbitrators, because the Exchange and its members have an interest adverse to that of plaintiffs, who are claiming that the acts of Mahony, as representative of the Exchange, were illegal. (Indeed, in a companion action by plaintiffs

the Exchange is one of the defendants.) The mere fact that the members of the arbitration Board and the panels were originally selected by officers of the Exchange is insufficient to invalidate the selection of arbitrators, by lot, from the Board or from the panels. As pointed out by the Court of Appeals in Matter of Astoria Medical group, 11 N Y 2d 128, at p. 136: "even in cases where the contract expressly designated a single arbitrator who was employed by one of the parties or intimately connected with him, the courts have refused to disqualify the arbitrator on the ground of either interest or partiality". This does not mean, however, that a person may be permitted to serve as arbitrator who himself possesses an interest in the subject matter adverse to that of one of the parties. The members of the arbitration Board of the Exchange are selected solely from members and allied members of the Exchange. As such, each of them has a financial interest adverse to that of plaintiffs, who are claiming that the Exchange and its members are liable for the acts of Mahony pursuant to the allegedly wrongful delegation to him of Kamerman's authority to liquidate Haupt. It follows that no member of the Arbitration Board may properly serve as an arbitrator of the controversy here involved, just as a party to a dispute may not, though named in a contract as arbitrator, act in such capacity (Matter of Cross & Brown Co. [Nelson],

4 A D 2d 501). The arbitration should, therefore, proceed before an arbitrator chosen by lot from the first panel, three chosen by lot from the second panel, and one appointed by the court, pursuant to section 7504 CPLR; instead of a member of the Arbitration Board, who would be disqualified. Of course, no person may properly be selected from the first and second panels who is a member of the Exchange.

Plaintiffs contend that the parties intended arbitration to be limited to a panel of arbitrators chosen in accordance with the Constitution of the Exchange, and that, since this is not possible (because no member of the Arbitration Board is qualified to serve), the provision for arbitration must fall. This contention appears to be without merit (Matter of Klines, 2 A D 2d 373, affd. 3 N Y 2d 816; Matter of Delma Eng. Corp., 5 N Y 2d 852, affd. 6 A D 2d 710). In the Delma Eng. Corp. case, supra, the court pointed out that the agreement for arbitration did not name a particular arbitrator. The situation presented was similar to that which exists here. In the Klines case, supra, even though a specific arbitrator was named, the court appointed a successor when the named arbitrator chose not to serve. The case of Marcus v. Meyerson, 5 A D 2d 818, cited by plaintiffs, is clearly distinguishable. There a particular arbitrator was named in the agreement, under circumstances

indicating that he alone was acceptable to the parties. The court described his appointment as "sui generis". In the instant case, no arbitrator was named in the arbitration agreement, and there is nothing in the agreement to indicate that if the arbitrators could not all be selected pursuant to the Stock Exchange Constitution, the parties intended that there be no arbitration at all.

In so far as the movants seek to stay the action and to compel plaintiffs to submit to arbitration, the motion is granted. To the extent that dismissal of the complaint is sought, the motion is denied (D-Lion Co. v. United Excavating & Paving, Inc., 245 N.Y.S.2d 418).

Settle order in which provision is to be made for the appointment by the court of the arbitrator who would normally be selected from the members of the Exchange's Arbitration Board.

Dated: March 18, 1964

/s/ S M G

J.S.C.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT,	:	
Plaintiff,	:	75 Civ. 3214 W.K.
-against-	:	AFFIDAVIT IN SUPPORT OF MOTION TO STAY
H. ROSS PEROT, et al.,	:	ACTION IN FAVOR OF REQUIRED ARBITRATION
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT M. BISHOP, being duly sworn, says:

1. I am a Senior Vice President of defendant New York Stock Exchange, Inc. (the "Exchange") and am in charge of its Regulation and Surveillance Division. I make this affidavit in support of the motion to stay this action on the ground that arbitration is required of the controversies comprehended by the complaint. The facts hereinafter stated are either known to me or derived from the records of the Exchange.

2. The Exchange is a not-for-profit corporation incorporated under the laws of the State of New York and is registered as a national securities exchange with the Securities and Exchange Commission pursuant to Section 6 of the Securities

Exchange Act of 1934. Upon applying for such registration in September, 1934, the Exchange was required by Section 6 of the Act to submit its constitution and rules to the Commission and the Commission was required to determine, as a precondition to registration, that "the exchange applying for registration is so organized as to be able to comply with the provision of this title (the Exchange Act), the rules and regulations thereunder, and that the rules of the exchange are just and adequate to insure fair dealings and to protect investors" (Section 6(d)). By order of September 28, 1934, the Commission so determined and registered the Exchange effective as of October 1, 1934. The Exchange has continued to be registered as a national securities exchange. The Commission is authorized under Section 19(c) of the Exchange Act to alter or amend the Exchange's constitution and rules where necessary or appropriate.

3. The Exchange is composed of individuals engaged in the securities business. The Exchange has 1,366 members and 3,984 allied members the majority of whom are associated with an aggregate of 513 organizations (either firms or corporations, collectively "member organizations") engaged in the securities business.

4. The constitution of the Exchange provides for the arbitration of controversies between parties who are members, allied members or member organizations. Article VIII, Sec. 1 of the Exchange's constitution states that:

> "Any controversy between parties who are members, allied members, member firms or member corporations shall, at the instance of any such party * * * be submitted for arbitation, in accordance with the provisions of the Constitution and the Rules of the Board of Directors."

The constitution further provides for the arbitration of disputes between non-members and a member or allied member or member organization arising out of the business of the member, allied member or member organization. The arbitration provisions are deemed by the Exchange to constitute an agreement to arbitrate which is binding upon all members.

5. The arbitration provisions are among the most significant of the measures taken by the Exchange to implement the self-regulation contemplated by the Exchange Act. The provisions are broad and comprehensive and are intended to keep controversies involving members, allied members, and member organizations out of court. The Exchange has determined in the exercise of its duty of self-regulation that such proceedings are the most appropriate and least disruptive manner of resolving disputes involving the Exchange community.

6. The only issues raised by the complaint arise out of the business of duPont Walston Incorporated (formerly Walston & Co., Inc.) and specifically relate to the realignment of its business as a member corporation as of July 2, 1973. At the time of the realignment and thereafter Walston was a member corporation of the Exchange.

7. The complaint in this action names twenty defendants. Each of the following eleven defendants was at the time of the realignment and thereafter either a member, allied member or member corporation of the Exchange:

duPont Glore Forgan Incorporated
Blair, Allen
Cox, Charles W.
Cullen, Daniel J.
Cullen, D. Tipp
DeTata, Douglas E.
Doughty, John J.
Fleming, William D.
Hart, Milledge A. III
Meyerson, Morton H.
Thomson, George T.

Furthermore, the plaintiff as trustee of a former member corporation of the Exchange, stands in the shoes of that member corporation.

8. The self-regulatory program of the Exchange, which has been approved by the Securities Exchange Commission, and the procedure contemplated by the Exchange and the members of the Exchange community for the resolution of their disputes, will be frustrated unless arbitration is compelled.

For these reasons, the Exchange requests that the motion to stay the action in favor of arbitration be granted.

/s/ Robert M. Bishop

Sworn to before me this
13th day of October, 1975

/s/ John Bolos, Jr.
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated, Plaintiff, - against - H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E. D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR and D. TIPP CULLEN, Defendants.	75 Civ. 3214 (WK) AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DELIA R. McQUADE, being duly sworn, deposes and says:

1. I am the Assistant Secretary of the American Stock Exchange, Inc. ("Amex"), and I make this affidavit based on a review, which I caused to be made, of the Amex membership records.

2. Those records show that as of July 2, 1973 and thereafter, duPont Walston Incorporated (formerly Walston & Co. Inc.) and duPont Glore Forgan Incorporated were member corporations of the Amex and the following individuals were all allied members of the Amex: Morton H. Meyerson, Daniel J. Cullen, Douglas E.

DeTata, William D. Fleming, Allan Blair, John J. Doughty, Charles W. Cox, Daniel T. Cullen, George T. Thomson and Mervin L. Stauffer.

Delia R. McQuade

DELIA R. McQUADE

Sworn to before me this

12th day of October, 1975

Arlene M. Rogers

Notary Public

ARLENE M. ROGERS
Notary Public, State of New York
No. 41-3323825
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated, Plaintiff, -against- H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E. D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR, and D. TIPP CULLEN, Defendants.	75 Civ. 3214 (WK)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

GEORGE A. DAVIDSON, being duly sworn, deposes and says:

1. I am a member of the firm of Hughes Hubbard & Reed, attorneys for plaintiff Winthrop J. Allegaert, Trustee in Bankruptcy of duPont Walston Incorporated ("Walston"), and am a member of the bar of this Court.

2. I make this affidavit in opposition to the motion of defendant H. Ross Perot and 14 other defendants ("the

Perot group") for an order staying this action pending arbitration.

3. Upon his appointment as Trustee, the Trustee took possession of certain books and records belonging to Walston. Among these records were letters from the New York Stock Exchange, Inc. and the American Stock Exchange, Inc. approving the Perot Plan for realigning the business of Walston and duPont Glore Forgan Incorporated which is the subject of this action. Copies of these letters are annexed hereto as Exhibits A and B, respectively. For the reasons stated in the Trustee's memorandum, the participation of the stock exchanges in the matters raised in the complaint disqualifies the stock exchanges from serving as arbitration tribunals in this case.

4. The Trustee has not assumed the contracts containing the arbitration clauses on which the Perot group relies.

5. In January 1974, a shareholder's derivative action was commenced in New York State Supreme Court, New York County, by Nella A. Walston, a major shareholder of Walston and widow of Walston's founder. The Nella A. Walston complaint, a copy of which is annexed hereto as Exhibit C, contains many of the same allegations as the Trustee's complaint in this action. A copy of the Trustee's complaint is annexed hereto as Exhibit D.

6. I have examined the file of court papers of Walston's former counsel in the Nella A. Walston litigation to determine whether any of the defendants in that litigation made any request for arbitration. The file indicates that all eleven members of the Perot group who were defendants in the Nella A. Walston litigation answered the complaint on the merits and participated in other proceedings without ever seeking arbitration. Four of the defendants -- H. Ross Perot, duPont Glore Forgan Incorporated, PHM & Co. and Charleston Investment Company -- asserted counterclaims. Other proceedings in the action included a motion for a temporary receiver, a motion to dismiss, a motion to dismiss the counterclaims, interrogatories to one defendant, and answers to those interrogatories.

7. On April 25, 1975 two of my partners and I met with Messrs. Gruenberger, Schlakman and Luce, members of the three firms who among them represent eleven of the fifteen members of the Perot group. During the meeting we informed them that the Trustee intended to file suit regarding the Perot Plan. No mention was made of arbitration at the meeting.

8. Between the filing of the complaint on July 1, 1975 and the filing of the Perot group's motion on October 14,

counsel for defendants telephoned me on several occasions to seek extensions of time to appear, to move or answer, or to respond to the Trustee's interrogatories and request for production of documents. In none of these conversations was there any mention of arbitration. The first time any member of the Perot group mentioned arbitration was in the papers on this motion.

WHEREFORE, I respectfully request that the Perot group's motion for a stay pending arbitration be denied in all respects.

S/ George A. Davidson
George A. Davidson

Sworn to before me this
29th day of October 1975.

Susan M. Resti
Notary Public

THE New York Stock Exchange

Gwartz, Jr.
Vice President
5058

Mr. Larry S. Glazer, Treasurer
duPont Glore Forgan Incorporated
1 Wall Street
New York, New York 10005

June 29, 1973

Mr. George T. Thomson, Senior Vice President
Walston & Company, Inc.
77 Water Street
New York, New York 10005

Gentlemen:

Please be advised that the Exchange has today approved the proposal of Walston & Co., Inc. and duPont Glore Forgan, Incorporated to realign their businesses in accordance with the most recent drafts of the various agreements and other supporting documents submitted to the Exchange setting forth the terms of said realignment. Such approval is, of course, based upon only the drafts of such documents which have been submitted and reviewed by the Exchange and this approval is given with the understanding that following the consummation of the proposed realignment the Exchange will receive fully executed copies of all documents previously received in final form and reflecting no significant change from the most recent drafts furnished. (The most recent drafts reviewed by the Exchange consist of the Master Agreement, proof of June 29, 1973, and the following Ancillary Agreements referred to in Article 3 of the said proof of Master Agreement: the Clearing Agreement (Proof of 6/29/73), the Transfer Agreement (Proof of 6/29/73), Capital Agreement (Proof of 6/29/73), Electronic Data Processing Agreement (Proof of 6/27/73), Walston Lender Consents (Proofs of 6/23/73 and 6/29/73), PHM, etc. Consents (Proofs of 6/26/73 and 6/21/73) and the Letter Agreement (Proof of 6/29/73).

In addition, the Exchange has reviewed proofs of the following documents:

Warrant Holders Agreement - Proof of 6/19/73

CSI 2nd Series Holders Declaration - Proof of 6/19/73

Voting Agreement - Proof of 6/29/73

Pari Passu Agreement - Proof of 6/29/73

The Exchange has no objection to the provisions of any of the above mentioned proofs.

The Exchange has approved those individuals who were previously approved to function as registered representatives, supervisory persons and/or officers with duPont, Glore Forgan Inc. to act in the same capacities with Walston & Co., Inc. This approval is given subject to our receipt of a complete listing of those individuals and their positions. We have also noted our records to indicate that all branch offices of duPont, Glore Forgan Inc. have been transferred to Walston & Co., Inc. Again, we would appreciate receiving a complete listing of those offices. The Exchange has reviewed and has no objection to the amendments to the Certificate of Incorporation of duPont (attached to the above referred to Capital Agreement) and Walston (attached as Exhibit A to the Walston Lender Consent, proof of 6/29/73 referred to above), however, the Exchange has not received the By-laws of either corporation, which we understand will be furnished to us for review.

The Board of Directors of the Exchange has approved the affiliations listed in the attached Admissions Calendar. The Board of Directors also approved the acquisition by Walston of the preferred stock of duPont as contemplated by the Agreements listed above, on the basis of Section 1.2 of the Master Agreement. The Board also approved the various investments (including the additional amount of municipal bonds to be pledged in the acquisition settlement account at duPont by Mr. Perot) and the exchanges of securities scheduled to be consummated at the Closing, all as contemplated by the Master Agreement and the above referred to Ancillary Agreements.

In regard to Mr. Meyerson's letter of June 29 to Paul Fitzgerald which seeks to confirm certain basic agreements, the subject matter of most of the items mentioned in that letter are covered above. Insofar as they are not, our understanding and confirmation is as follows:

On the basis of the letter dated June 28 from your Mr. Glazer to our Mr. Bishop, the Exchange is satisfied that the net capital value which the New York Stock Exchange Special Trust Fund Note pledged in the PHM & Co. S.D.N. account should receive is $15 million under present conditions, subject to periodic review as duPont further resolves the ASA account and subject to the firm's continued substantiation of the reasonableness of the net capital value then being accorded the Note in the judgement of the Exchange.

In view of the restrictions on pre-payment contained in the form of subordinated debenture of duPont to be purchased by Walston at the Closing the Exchange will consider the proceeds thereof as good net capital under Rule 326.

The Exchange understands that duPont, immediately following the Closing, will have a debt equity ratio of 65/35 and that thereafter this ratio will be maintained in compliance with the rules of the Board of Directors.

We understand that duPont is preparing a letter to the Exchange which will document the current net worth of Exeter North and Exeter International and on the basis of this letter the Exchange will determine

whether, at this time, there should be any charge against duPont's net capital with respect to duPont's contingent obligations as a result of the reorganization of the Evergreen Valley project. This matter will be kept under review as that project develops. So long as duPont can satisfy the Exchange that the primary obligors can be reasonably expected to meet their obligations (thereby avoiding any exposure to duPont) there will be no charge imposed against duPont's net capital.

In connection with periodic extensions of credit by Walston to duPont as a result of the provisions of Section 9(a) of the Clearing Agreement, the Exchange, acting pursuant to Section 4(f)(2)(ii)(b) of Regulation T, is willing to approve all such extensions on the condition that Walston continues to certify to the Exchange that such extensions of credit are not a part of its normal course of business and duPont continues to certify to the Exchange that if duPont or any subsidiary of duPont deals in securities, the proceeds of any such extension will not be used to increase such dealing and further provided that duPont reports in writing to the Exchange each month the details with respect to each such credit extension during the previous month.

Under the Master Agreement and the Ancillary Agreements referred to above, the Exchange understands that certain charges and other items are to be borne by Walston and not by duPont and that Walston has indemnified duPont with respect thereto. We further understand that with respect to such charges and items duPont intends to immediately collect from Walston and segregate in cash the account indemnified. In any such case the Exchange agrees that the proper capital treatment will be to impose one net capital charge against Walston and that there will be no increase in duPont's aggregate indebtedness.

We understand that Walston will furnish us an opinion of its counsel to the effect that the new voting preferred stock issued to Charleston by Walston at the Closing in exchange for outstanding preferred stock has been legally and validly issued in accordance with Delaware Corporate Law.

The Exchange does not, of course, pass upon the "deal" or business aspects of any proposed transaction entered into by its member organization and its review of required documentation is only from the standpoint of compliance with Exchange rules.

Very truly yours,

James L. Brady Jr.

NEW YORK STOCK EXCHANGE, INC.

MEMORANDUM

June 29, 1973

To the Board of Directors:

The Regulation and Surveillance Group recommends favorable consideration of the following applications:

duPONT GLORE FORGAN INCORPORATED
To be Admitted July 2, 1973

George T. Thompson (VS) A.P.-Dir.
(Mr. Thompson will also remain an Allied Member and Director of duPont Walston Inc.)
Harold A. Rousselot - A.P.-Dir.
(Mr. Rousselot will also become an Allied Member of duPont Walston Inc. but will retire as an Allied Member from duPont Glore Forgan Incorporated)
H. Ross Perot (Cont. Sec. Dem. Note)
duPont Walston Incorporated (NVS & Debs.)
*William J. Bergrath (VS) V.P.
*Wallace J. Gardner, Jr. (VS) V.P.
*Lawrence A. Goldberg (VS) V.P.
*Charles I. Salerno (VS) V.P.
*William E. Sexton (VS) V.P.

duPONT WALSTON INCORPORATED
To be Admitted July 2, 1973

Morton Meyerson (VS) A.P.-Dir.
(Mr. Meyerson will also remain an Allied Member and Director of duPont Glore Forgan Incorporated)
Walter E. Auch (VS) (†) Pres.-Chief Exec. Off.-Dir.
(Mr. Auch will retire as an Allied Member and Director of duPont Glore Forgan Incorporated)
Harold A. Rousselot (VS) (†) Exec. V.P.-Dir.
Robert C. Dunwoody (VS) (†) Sr. V.P.-Dir.
(Mr. Dunwoody will retire as an Allied Member and Director of duPont Glore Forgan Incorporated)

Fred L. Heyes (VS) (†) Sr. V.P.-Dir.
Daniel D. Jackson (VS) (†) Sr. V.P.-Dir.
Ralph W. Williams, Jr. (VS) (†) Sr. V.P.-Dir.
Allen Cymrot (VS) (†) First V.P.-Dir.
Jerome D. Rosenstein (VS) (†) First V.P.-Dir.
H. Richard Walker (VS) (†) First V.P.-Dir.
Edward Saville (VS) (†) First V.P.-Dir.
Merv Stauffer (VS) A.P.-Dir.
Charleston Investment Company (VS) A.P.

James F. Swartz, Jr.
Assistant Vice President

American Stock Exchange Inc.

86 Trinity Place
New York NY 10006
212/938-2520

J Hamilton Crawford Jr
Vice President
Membership Services Division

July 6, 1973

Mr. Morton Meyerson, President
duPont Glore Forgan Incorporated
1 Wall Street
New York, New York 10005

Mr. Daniel J. Cullen, Chairman of the Board
Walston & Co., Inc.
77 Water Street
New York, New York 10005

Dear Sirs:

This will confirm our advice to Mr. Larry S. Glazer, Vice President and Treasurer of duPont Glore Forgan Incorporated, on June 29, 1973 that the proposed realignment of duPont Glore Forgan Incorporated and Walston & Co., Inc. which became effective on July 2, 1973 complies with the requirements of the Constitution and Rules of the American Stock Exchange. This determination was based upon a review of drafts of the Master Agreement and related agreements furnished on or before June 29, 1973 to the Exchange by your representatives which set forth the terms and conditions of such realignment and upon discussions with such representatives in connection therewith. In making this determination, the Exchange has assumed that the final terms and conditions of this realignment did not differ in any material respects from the provisions in the most recent drafts of such documents reviewed by the Exchange. In accordance with its customary practice, the Exchange does not express a view with respect to the business aspects of this realignment.

As we further advised Mr. Glazer, the foregoing determination is subject to the fulfillment of the following conditions:

1. Receipt by the Exchange of conformed final copies of all agreements previously furnished to the

Mr. Morton Meyerson, President
duPont Glore Forgan Incorporated

July 6, 1973

Mr. Daniel J. Cullen, Chairman
of the Board
Walston & Co., Inc.

Exchange, together with conformed copies of all other agreements, opinions, certifications, charter amendments and by-laws referred to in the Master Agreement which were delivered at the closing.

2. Application to this Exchange by Messrs. H. Ross Perot, Morton Meyerson, Harold A. Rousselot and Walter E. Auch for approval as allied members of duPont Walston Incorporated and by Messrs. Rousselot and George T. Thomson, Jr. for approval as an approved person and an allied member, respectively, of duPont Glore Forgan Incorporated.

3. Application to this Exchange by PHM & Co. for approval as an approved person of duPont Glore Forgan Incorporated.

4. Application to this Exchange by Charleston Investment Company for approval as an approved person of duPont Walston Incorporated.

We have also reviewed the letters of June 29 and July 1, 1973 from the New York Stock Exchange to Messrs. Glazer and Thomson regarding that Exchange's approval of the realignment of your organizations. In this connection, we should note that the New York Stock Exchange has traditionally exercised primary responsibility for the inspection and examination of dual member organizations to ensure their compliance with all rules relating to financial responsibility and has been designated by the Securities Investor Protection Corporation as the examining authority for duPont Glore Forgan Incorporated and duPont Walston Incorporated. Accordingly, we have made this Exchange's determination regarding the realignment further subject to all conditions which have been imposed by that Exchange in passing upon such realignment.

We have also confirmed with Mr. Glazer that in all instances where the Master Agreement and the ancillary agreements require specific approvals of the New York Stock Exchange, these approvals will be sought

Mr. Morton Meyerson, President
duPont Glore Forgan Incorporated

July 6, 1973

Mr. Daniel J. Cullen, Chairman
of the Board
Walston & Co., Inc.

from the self-regulatory organization which has been designated by SIPC as the examining authority for both realigned organizations if, at the time such approvals are requested, the New York Stock Exchange no longer has examining authority over the appropriate parties. Copies of any such requests and satisfactory evidence of any such approvals should be promptly furnished to us in order to determine whether their terms are in compliance with the Constitution and Rules of this Exchange.

We assume that any applications for Exchange approval of individuals other than those referred to above as regular or allied members or approved persons which are required as a result of the realignment will be submitted to the Exchange in the near future. We would also appreciate your submitting to this Exchange a list of all registered representatives, supervisory persons and/or officers of duPont Glore Forgan Incorporated who will have joined duPont Walston Incorporated effective July 2, 1973 with a description of their respective capacities with the latter firm. In addition, you should furnish us a complete list of the branch offices which have been transferred from duPont Glore Forgan Incorporated to duPont Walston Incorporated as a result of the realignment.

In addition, the Exchange should be kept advised of developments regarding the proposed further business combination contemplated by Section 1.2 of the Master Agreement and the proposed cross equity arrangements described in the Letter Agreement attached as Exhibit 13 to the Master Agreement. We would also expect to be kept advised of any other significant developments affecting the financial condition, operations and organizational structure of both realigned organizations and to be furnished with such information and reports in connection therewith as we may require.

In accordance with your request, you are also advised that as of June 29, 1973 duPont Glore Forgan Incorporated and Walston & Co., Inc. were member organizations in good standing of this Exchange.

We would appreciate your signifying acceptance of the foregoing by having the attached copy of this letter executed in the spaces indicated by Messrs. Meyerson and Auch on behalf of duPont Glore

Mr. Morton Meyerson, President
duPont Glore Forgan Incorporated

July 6, 1973

Mr. Daniel J. Cullen, Chairman
of the Board
Walston & Co., Inc.

Forgan Incorporated and duPont Walston Incorporated, respectively, and by Messrs. Perot and William K. Gayden on behalf of PHM & Co. and Charleston Investment Company, respectively.

Sincerely yours,

BY HAND

cc: Mr. Larry S. Glazer, Vice President and Treasurer
duPont Glore Forgan Incorporated

Mr. George T. Thomson, Jr., Executive Vice President
duPont Walston Incorporated

Accepted July , 1973

duPont Glore Forgan Incorporated

by _____
Morton Meyerson
Chairman and President

PHM & Co.

by _____
H. Ross Perot
General Partner

duPont Walston Incorporated

by _____
Walter E. Auch
President

Charleston Investment Company

by _____
William K. Gayden
Vice President

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NELLA A. WALSTON,	:	
Plaintiff,	:	
-against-	:	
duPONT, GLORE FORGAN INCORPORATED, PHM & CO., CHARLESTON INVESTMENT COMPANY, ELECTRONIC DATA SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., H. ROSS PEROT, DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, ALLAN BLAIR, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, D. TIPP CULLEN, WILLIAM K. GAYDEN, MERVIN L. STAUFFER and duPONT WALSTON INCORPORATED,	:	Index No. 00625/74
Defendants.	:	COMPLAINT

Plaintiff, by her attorneys, complaining of defendants, alleges upon information and belief as follows:

1. (a) Plaintiff is the owner of 180,000 shares of the common stock of duPont Walston Incorporated (Walston), formerly named Walston & Co., Inc. She has been a shareholder of Walston continuously since 1955, the date of Walston's incorporation.

(b) Plaintiff brings this case derivatively on behalf of Walston.

2. (a) Walston is a corporation organized under the laws of the State of Delaware, and has its principal place of business within the City, County and State of New York. It is a broker-dealer, registered with the Securities and Exchange Commission (SEC) and a member firm of the New York Stock Exchange, Inc. (NYSE). It has been and is engaged in all phases of the securities business.

(b) duPont, Glore Forgan Incorporated (duPont) is a corporation organized under the laws of the State of Delaware, and has its principal place of business within the City, County and State of New York. It is a broker-dealer registered with the SEC and a member firm of the NYSE. Prior to July 2, 1973, duPont was engaged in all phases of the securities business.

(c) PHM & Co. (PHM) is a partnership owned by H. Ross Perot, Milledge Hart and Morton H. Meyerson. It was formed for the purpose of holding the investment of its partners in duPont and participates in the management and operation of duPont. PHM does business and transacts business in the City, County and State of New York.

(d) Charleston Investment Company (Charleston) is a corporation organized under the laws of the State of Delaware. It is owned by Perot and members of his family. Charleston was formed for the purpose of holding Perot's

investment in Walston. As set forth hereinbelow, Charleston now holds 55% of the voting power of Walston's entire outstanding stock. It participates in the management and operation of Walston.

(e) Electronic Data Systems Corporation (EDS) is a corporation organized under the laws of the State of Texas. Its stock is held by members of the public and a controlling interest is held by Perot. EDS furnishes electronic data processing, telecommunication data and data communication services and supplies such services to Walston and duPont. EDS does business and transacts business within the State of New York.

(f) The NYSE is a corporation organized under the laws of the State of New York. It maintains its principal office at 11 Wall Street, New York, New York.

(g) Defendants H. Ross Perot, William K. Gayden and Mervin L. Stauffer represented the interests of H. Ross Perot, PHM and Charleston in the transactions challenged below. They, together with PHM and Charleston, will hereinafter be referred to as the "Perot Interests". These defendants do business and transact business in the City, County and State of New York.

(h) Defendants Daniel J. Cullen, William D. Fleming, George T. Thomson, Allan Blair, Charles W. Cox, Douglas E. DeTata, John J. Doughty and D. Tipp Cullen were

directors of Walston at all relevant times. They knowingly took action detrimental to Walston in order to benefit themselves. These defendants will hereinafter be referred to as "Aider and Abettor Defendants." These defendants reside in, do business or transact business in the City, County and State of New York.

3. (a) PHM made an initial investment in duPont in 1970, and thereafter made further periodic investments. By July 2, 1973, PHM's investment was in excess of $85 million. PHM's investment was seriously jeopardized by persistent and pervasive operating losses sustained by duPont. Between May, 1971 and July, 1973, duPont sustained operating losses in excess of $30 million. These operating losses were directly related to the conduct by duPont of a retail securities business.

(b) The NYSE requires that member firms maintain a ratio of aggregate indebtedness to net capital within the meaning of Rule 325 promulgated by it (Net Capital Ratio). By May, 1973, duPont's ratio was in excess of 13 to 1, approaching the 15 to 1 ceiling imposed by the NYSE. A violation of the NYSE net capital rule would have resulted in suspension of duPont and its liquidation. PHM recognized that its entire investment of $85 million would be lost if duPont were suspended and liquidated.

4. In July, 1972, a wholly-owned subsidiary of EDS entered into a contract with Walston to perform electronic data processing for it. At the same time, Charleston agreed to invest $15 million in Walston in three equal installments, the last installment being due in or about August, 1973. In consideration for the investment and commitment made by Charleston, it received representation upon Walston's board of directors and its executive committee.

5. Prior to May, 1971, the NYSE had committed itself to make $15 million available to duPont in the event of its insolvency. By Spring, 1973, the NYSE recognized that duPont might become insolvent and that it would be called upon to pay $15 million to duPont's creditors. Further, the NYSE faced additional liability from potential claims asserted by duPont's subordinated lenders, stockholders and customers.

6. The NYSE and PHM recognized that unless additional capital was infused, duPont would be liquidated. They thereupon entered into a plan, aided and abetted by other defendants, to use the capital of Walston to save their investments and commitments to duPont. The plan provided that Walston would invest more than $16 million in duPont and acquire duPont's retail brokerage business. In turn, duPont would become a service company only, performing back office

services for Walston, for which it would receive sufficient fees to meet all of its current obligations regardless of whether such obligations were reasonable or related to the performance of back office services for Walston.

7. In order to accomplish the aforementioned plan, the defendants embarked upon a course of action designed to mislead and coerce Walston into investing capital in duPont, acquiring duPont's unprofitable retail securities business and agreeing to pay duPont's operating expenses.

(a) The Perot Interests misrepresented to Walston, duPont's net capital ratio, stating that it was 10 to 1, when, in fact, it was in excess of 13 to 1, denied knowledge that duPont was on the surveillance list maintained by the NYSE of member firms, was subject to restrictions imposed by the NYSE and submitted false and misleading financial information and data.

(b) NYSE, the Perot Interests and certain of Aider and Abettor Defendants failed to inform Walston that duPont was a failing company and that, but for an infusion of capital by Walston, would be liquidated and declared bankrupt. Instead, it was represented that the purpose of the plan was to protect Walston from liquidation and bankruptcy.

(c) NYSE, the Perot Interests and certain of the Aider and Abettor Defendants exerted illegal and excessive pressure on Walston, claiming or implying that unless Walston agreed to the plan, it would be suspended from engaging in the securities business and liquidated. In addition, the Perot Interests stated that Charleston would not honor its commitment to Walston to invest an additional $5 million in its business and would withdraw its present investment of $10 million, and that influence would be exerted upon other creditors to call their loans.

(d) The Perot Interests, in violation of fiduciary law, promised employment contracts and other benefits to Walston directors who agreed to vote in favor of the plan. The Aider and Abettor Defendants accepted such offers and voted in favor of the plan.

9. All twenty Walston directors were present at a meeting held on July 1, 1973, called for the purpose of obtaining the approval of a majority of the directors to the plan. During the course of the meeting, one director became ill and left prior to the vote. That director stated at the meeting and subsequently confirmed in writing his opposition to the plan. Of the remaining 19 directors, 10 voted in favor and 9 voted against the plan. The Perot Interest directors, Gayden and Stauffer, and the Aider and Abettor Defendants

voted in favor of the plan. Accordingly, a majority of disinterested directors voted against the plan and less than a majority of directors voted in favor of the plan. Therefore, as a matter of law, the plan was not approved.

9. Despite the fact that the plan was not approved for the reasons set forth in paragraph "8" above, the NYSE, the Perot Interests and the Aider and Abettor Defendants took legal action as though the plan had been approved, by adopting the master agreement containing the terms of the Plan. The master agreement provided that Walston:

(a) purchase from duPont, for an aggregate price of $16.7 million, 810 shares of duPont Series Four Preferred Stock at $10,000 per share and a duPont subordinated debenture in the principal amount of $8.6 million. These securities had only a nominal value as duPont was a failing company, and the investment which provided additional cash capital for duPont served no legitimate business purpose for Walston.

(b) purchase duPont's branch office system and its other "front office" departments and enter into a ten-year contract, pursuant to which duPont received a profit participation in Walston's pre-tax earnings and undertook to act as sole clearing agent for Walston and perform related services. The purpose of these arrangements was to limit duPont's business activities to riskless ones and provide it

with income sufficient to insure that it would incur no further operating losses and at the same time participate in Walston's pre-tax profits. The arrangements were unfair to Walston in that:

(i) the fee charged by duPont for clearing services was unreasonable in that Walston was capable of performing the identical services for itself at substantially lower cost;

(ii) Walston was required to make a security deposit in the sum of $3 million. duPont was not required to segregate this deposit or pay interest on it. duPont was permitted to use the deposit in the course of its business and the security deposit was subordinated to the claims of duPont's general creditors;

(iii) duPont was granted a profit participation based on Walston's pre-tax profits. The profit participation permits duPont to receive 30% of Walston's pre-tax profits until $4 million has been received; 25% until $4.5 million has been received; and thereafter 15%. Thus, duPont has a large share in Walston's profits but no corresponding share of Walston's losses; and

(iv) Walston paid for duPont's branch office system and front office departments the market value of securities and other inventory items, book value for leasehold

improvements, office fixtures, furniture and equipment, and assumed duPont's obligations under outstanding leases and contracts. The aforementioned payments were excessive in that duPont's branch office system and front office departments were responsible for duPont's enormous operating losses and the transfer of these unprofitable business activities, when taken as a whole, constituted the shifting of a liability for which consideration should have been received, not paid.

(c) exchange 398,803 shares of its Series A Convertible Preferred Stock (Series A Stock) owned by Charleston for the same number of shares of a newly authorized Series B Convertible Preferred Stock (Series B Stock). The Series A Stock and the Series B Stock were in all material respects equivalent except that the Series B Stock had 10 votes for each share of stock and the Series A Stock was non-voting. As a result of the exchange, the Series B Stock represented 55% of the voting power of Walston and constituted, therefore, control of Walston. No consideration was paid for the transfer of absolute control of Walston to the Perot Industries.

(d) guarantee EDS the same pre-tax profits on the consolidated operation that it enjoyed when it held separate agreements with duPont and Walston. The guaranty

was unfair in that EDS had an excessive profitable contract with duPont, the burdens of which Walston was required to assume. In addition, Walston agreed to pay EDS $2.5 million representing the alleged cost to EDS of converting the EDS-duPont and Walston contracts to a single contract. Such cost should not have been imposed upon Walston, was excessive and bore no relation to the actual cost incurred by EDS. Further, Walston did not receive its full proportionate share of the economies realized through consolidation with duPont.

10. Plaintiff did not make demand upon Walston's directors to initiate this action because such demand would be futile. The Series B Stock owned by the Perot Interests constitutes 55% of the voting power of Walston's entire outstanding stock and accordingly the Perot Interests have elected or approved all of Walston's directors. The directors are dominated and controlled by the Perot Interests and cannot be expected to commence and vigorously pursue an action against the Perot Interests.

WHEREFORE, plaintiff prays for judgment as follows:

1. Appointing a receiver to manage and operate the affairs of Walston and duPont during the pendency of this action;

2. Declaring null and void and cancelling the master agreement and all implementing contracts thereunder between the Perot Interests and Walston;

3. Enjoining Walston temporarily and thereafter permanently from making any further payments to duPont pursuant to the master agreement;

4. Requiring defendants to account to Walston for their profits and Walston's losses.

5. Awarding to plaintiff reasonable attorneys' and accountants' fees; and

6. Such other and further relief as may be just and proper in the premises.

Dated: New York, N.Y.
January 10, 1973

SILVERMAN & HARNES
Attorneys for Plaintiff
One Rockefeller Plaza
New York, New York 10020

STATE OF CALIFORNIA)
: ss.:
COUNTY OF SAN DIEGO)

NELLA A. WALSTON, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Nella A. Walston

Sworn to before me this
17th day of Dec. , 1973.

Louis Millen
Notary Public

OFFICIAL SEAL
LOUIS MILLEN
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
My Commission Expires Apr. 27, 19

P. O. Box One, Coronado, Calif. 92118

EXHIBIT D

COMPLAINT

See Complaint at 6.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Plaintiff,

-against-

H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E.D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR, and D. TIPP CULLEN,

Defendants.

75 Civ. 3214 (W.K.)

REPLY AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER GRUENBERGER, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and of the firm of Weil, Gotshal & Manges, attorneys for certain of the 15 moving defendants herein. As noted in defendants' accompanying Reply Memorandum (2-3), plaintiff's answering papers improperly seek to argue the underlying merits on this motion. I make this affidavit not to argue those merits which have no place in this motion, but to set forth additional facts showing why this motion to stay this proceeding pending arbitration is warranted, and to correct the record with respect to certain incomplete and erroneous statements made by plaintiff which do bear on arbitration. I also make this affidavit to identify the exhibits annexed hereto,

including unreported decisions relied upon by defendants, all of which rebut plaintiff's contentions against defendants' motion.

2. Plaintiff claims that the three arbitration clauses in the NYSE and AMEX Constitutions and the Master Agreement between the parties which would otherwise compel him so to arbitrate are unenforceable because they were contained in allegedly executory contracts which have been allegedly rejected by the trustee under Section 70b of the Bankruptcy Act. Defendants have rebutted this contention as a matter of law (Def. Reply Mem. 13-17), and it is readily refuted as a matter of fact.

3. First, the NYSE and AMEX constitutional provisions were not executory regarding duPont Walston (hereinafter "Walston") and could not have been rejected as contracts by the trustee at the time Walston was adjudicated a bankrupt. Prior to that time Walston had terminated its membership of both such exchanges (as of March 11, 1974 -- 16 days prior to its filing a Chapter XI petition on March 27, 1974 and 79 days prior to its adjudication as a bankrupt on May 29, 1974). See affidavits of the NYSE and AMEX officials, John Sankewich and Peter J. Armstrong, submitted herewith in support of this motion, and a copy of the NYSE's Weekly Bulletin, dated as of March 15, 1974, annexed hereto as Exhibit E.* Defendants' Reply Memorandum establishes conclusively that such termination extinguishes the executory nature of such contracts which rendered them not subject to rejection under Section 70b (Def. Reply Mem. 9).

4. In addition, these stock exchange contracts could not have been deemed executory, in any event, since Walston had ceased doing any business under stock exchange rules even long

* Defendants' Exhibits A through D are attached to my moving affidavit.

prior to Walston's adjudication. On January 21, 1974 following a Walston Board of Directors meeting, Walston announced that it was going out of the securities business. Within days, Walston launched a vigorous effort to sell its entire branch office system and related assets to other brokerage firms. Every Walston branch office was sold or closed between February and April 1974, and Walston had by then ceased doing business under stock exchange rules or otherwise.

5. The parallel assertion by plaintiff that the Master Agreement and the arbitration clause contained in Section 10.11 thereof were rejected by him as executory, is likewise incorrect. The fact is by the time Walston was adjudicated a bankrupt, Walston no longer had any future obligations to perform under any of the Realignment Agreements, including the Master Agreement, except to pay money. For example, the Transfer Agreement was completely executed in July 1973 at the time of Walston's realignment with duPont Glore Forgan Incorporated ("DGF Inc.") since all the assets to be exchanged pursuant to that agreement were conveyed at that time. Similarly, the Clearing and Related Services Agreement was not executory after February 27, 1974 when that agreement was terminated, except for Walston's obligation to pay money due thereunder. A copy of the agreement between Walston and DGF Inc. terminating that Clearing and Related Services Agreement is annexed hereto as Exhibit F. And, the Master Agreement on its face is and always was non-executory since it comprises a detailed exposition of events and agreements <u>already completed</u>.

6. To show the trustee's inconsistencies and to rebut the contention that he treats the Realignment Agreements in which the arbitration clause is contained as a "nullity", the Court need

only note the trustee's letter dated October 27, 1975 to DGF Inc. demanding payment "under the Clearing and Related Services Agreement dated as of July 2, 1973". A copy of that letter is annexed hereto as Exhibit G. The trustee should not be permitted inconsistently to claim "rejection" of these agreements on the one hand and seek enforcement under these same agreements on the other.

7. Plaintiff has not supplied any facts to support his attempt to portray a prior New York State action, Nella A. Walston v. duPont Glore Forgan Incorporated, et al., Index No. 00625/74 (Sup. Ct. N.Y. Cty.), as having been "actively litigated" by these defendants so as to create a claim of waiver of their right to demand arbitration here. My firm represented certain of the defendants in that action. The facts are that the Nella A. Walston action was commenced in mid-January 1974 by Mrs. Nella A. Walston, a stockholder of Walston, against 11 of the 15 defendants who have joined in this motion to seek arbitration. Defendants Morton H. Meyerson, Milledge A. Hart, III, Margot Perot and E.D. Systems Corporation were not defendants in that action and therefore could not possibly have waived their right to demand arbitration here. The 11 other defendants interposed answers on March 11, 1974, and four of those defendants asserted third-party counterclaims against Carl and Jack Walston, on grounds not raised by Mrs. Walston's complaint.* Simultaneously those 11 defendants moved to dismiss her action on procedural grounds. A few days before, on March 6, 1974, Mrs. Walston had moved for the appointment of a temporary receiver for Walston's assets. Later that same month, Walston filed its Chapter XI petition which effectively stayed the action (since Walston was a defendant) and all proceedings. Those

* The counterclaims were dismissed for procedural reasons.

answers and motions constituted the sole participation in the Nella A. Walston action by any of the moving defendants. The action has since been dormant, although one set of interrogatories was served by Mrs. Walston directed only to the NYSE -- not a party moving to compel arbitration. Not a single document was produced or sought by any of the moving defendants here, no other interrogatories were ever propounded or answered by anyone and no depositions were taken in the case at all. In sum, there was no discovery in that case by or against these defendants, and the merits of the case were never litigated in any respect. It is plain then that the Nella A. Walston case was not "actively litigated" by the moving defendants -- it lasted only some two months as to them.

8. Finally, I am annexing herewith copies of three unreported decisions of the federal district and bankruptcy courts of this district which are relied upon by defendants in their reply memorandum and which hold four square for arbitration of disputes such as this one, involving a former stock exchange member in bankruptcy reorganization proceedings.

Exhibit H - In the Matter of Blair (Cahn), 70 B 755 (May 12, 1972 S.D.N.Y.) (Babitt, J.)

Exhibit I - In the Matter of Blair (Cahn), 70 B 755 (September 6, 1972 S.D.N.Y.) (Brieant, J.)

Exhibit J - In the Matter of Blair (Danford), 70 B 755 (June 1, 1973 S.D.N.Y.) (Babitt, J.)

Peter Gruenberger

PETER GRUENBERGER

Sworn to before me this
10th day of November, 1975

Neil Schwarzfeld

Notary Public

NEIL R. SCHWARZFELD
Notary Public, State of New York
No. 31-8800845

Exhibits A through D are attached to the Gruenberger Moving Affidavit which was submitted with defendants' moving papers.

Office of the Secretary

New York Stock Exchange Weekly Bulletin

No. 4320 | Published by the New York Stock Exchange, Inc. | March 15, 197

MEMBERS

Deceased

WILLIAM X. FLEMING (Smith, Hague & Co., Incorporated) died — Mar. 8

Address Change

WILLIAM S. SJEM
Lewco Securities Corp.
80 Pine St., N.Y., N.Y. 10005

JOHN B. LYNCH
30 Broad St., N.Y., N.Y. 10004
(At G. S. Grumman & Assoc., Inc.)

IRVIN M. NAGER
80 Broad St., N.Y., N.Y. 10004
(At Conklin, Cahill & Co.)

Membership Sales

This includes information only with respect to sales arranged pursuant to bids and offers filed with the Membership Transfer Section.

As of 5 P.M. Thursday, Mar. 14, 1974:

Bid	$85,000
Offer	95,000
Sale—Mar. 6	90,000

MEMBER ORGANIZATIONS

Organization Changes

BAIRD, PATRICK & Co., INC.
Member Corporation to be admitted — Apr. 1
67 Broad St., N.Y., N.Y. 10004
†Joseph A. Patrick (VS) Pres.- Chmn. of Bd.
†David G. Baird, Jr. (VS) (Sub. Lender)
First V.P.—Dir.
†Stuart K. Patrick (VS) Second V.P.—Dir.
*Joseph A. Garvin (VS) (Sub. Lender) V.P.—Dir.
†Hugh W. Sanford III (VS) (Sub. Lender) V.P. - Dir.
†William J. Bergrath, Jr. (VS) V.P.
Robert B. Baird (Sub. Lender)
Marion B. Neville (Sub. Lender)
Timothy A. Patrick (Sub. Lender)

(Baird, Patrick & Company will cease to do business as a member partnership at the close of business Mar. 29)

DU PONT WALSTON INCORPORATED
Ceased to do business as a member corporation — Mar

FOSTER SECURITIES CORPORATION
Member Corporation admitted — Mar
140 B'way, N.Y., N.Y. 10005
†Frank Rubinstein (VS) Chmn. of Bd.—Chief Exec. Officer—Dir.
†Jerome S. Baron (VS & NVS) Pres.—Dir.
†Marvin R. Aeder (VS & NVS) Exec. V.P.—Chief Operating Officer—Dir.
†William D. Whitlaw (VS & NVS) Exec. V.P.—Treas.—Dir.
†Martin Siegel (VS & NVS) Exec. V.P.—See'y—Dir.
†Frank J. Jordan (VS) V.P.
*Anthony Santa Maria (VS) V.P.
Cecil C. March (Debs.)
Charles W. Walton (Debs.)

LEWCO SECURITIES CORP.
Member Corporation admitted — Ma
80 Pine Street, N.Y., N.Y. 10005
†Howard D. Taylor (VS) Pres.—Chief Exec. Officer—Treas.—Dir.
†Arthur W. Fried (VS) Chmn. of Bd.
†J. Philip Smith (VS) Exec. V.P.—Chief Operating Officer—See'y—Dir.
Michael J. Fitzpatrick (VS) V.P.
*William S. Sjem (VS) V.P.
†Warren F. Hellman (VS) Dir.
†Wilbur A. Cowett (VS) Dir.
†Frederick A. Klingenstein (VS) Dir.
Lehman Brothers Incorporated (VS) AP
Wertheim & Co., Inc. (VS) AP
(Not to be admitted Apr. 1 as previously published)

Information received up to 5 P.M. Thursday

Key: *Indicates Exchange Member; (†) allied member; (AP) approved person; (VS) voting stockholder; (NVS) non-voting stockholder; (Gen.) general partner; (Ltd.) limited partner; (Debs.) holder of debentures; (Sub. Lender) subordinated lender; (Cont. Sec. Dem. Note) contributor of a secured demand note. Italics indicates individuals located outside New York City.

duPont Walston
Incorporated
Members Principal Security and Commodity Exchanges

77 Water Street
New York, New York 10005
Tel.: (212) 437-4141

February 27, 1974

duPont Glore Forgan Incorporated
77 Water Street
New York, New York 10005

Attention: Morton H. Meyerson, Chairman

Gentlemen:

Following are the terms related to the disposition of the balance of the Clearing and Related Services Agreement between duPont Walston ("dW") and duPont Glore Forgan ("dGF"):

A. It is understood that dGF's services under the Clearing Agreement (the "Services") shall, commencing in March, 1974, relate to completing the delivery of securities for customer accounts that were transferred in connection with sales by dW of its branch offices and that the Services are part of the winding up of the Clearing Agreement provided for herein.

B. dW shall pay dGF, in accordance with this letter, dGF's costs incurred in performing the Services (which costs shall include costs attributable to the discontinuance of dGF's services under the Clearing Agreement) as follows:

1. For the period March 1, 1974 through March 31, 1974 - $2,100,000 plus an amount equal to the expenses for March, 1974, for borrowed money or property described in Section 6(b)(iii)(C) of the Clearing Agreement.

2. For the period April 1, 1974 through June 30, 1974 - $3,000,000.

3. On or before April 1, 1974, dW shall pay to dGF (i) one-half of the then unamortized balance of the termination costs referred to in Section 4 of the

BEST COPY AVAILABLE

Agreement for Electronic Data Processing Supplies and Services dated July 2, 1973 among dW, dGF, E.D. Systems Corporation and Electronic Data Systems Corporation, plus (ii) an amount equal to the expenses for April, 1974 for borrowed money or property described in Section 6(b)(iii)(C) of the Clearing Agreement.

4. There will be no charges to dW after June 30, 1974 for dGF's costs incurred in performing the Services.

C. dW shall pay to dGF, from time to time, as soon as possible sums up to the aggregate amount computed under paragraphs B.1. and B.3. above, which aggregate amount shall constitute an advance payment for the services to be rendered by dGF hereunder. Pending receipt of such aggregate payment dGF may apply the $3,000,000 advance payment it received at the time of the July 2, 1973 agreement to dW's obligations hereunder to pay for the Services. The payments referred to in paragraphs B.1. and B.3. above, when received by dGF, shall to the extent necessary, be used to restore the July 2, 1973 advance payment to $3,000,000.

D. If by April 1, 1974, dW has paid to dGF the sums referred to in paragraphs B.1., B.2. and B.3. above and if dGF's costs for the Services during the month of March 1974 (including the costs referred to in Section 6(b)(iii)(C) of the Clearing Agreement) were less than the payments made by dW pursuant to paragraph B.1. above, then dGF promptly following April 30, 1974 shall refund to dW the amount by which (i) the aggregate of the paragraph B.1. payments made by dW exceeds (ii) the sum of such dGF costs for March 1974 plus the costs referred to in Section 6(b)(iii)(C) of the Clearing Agreement for the month of April 1974 plus any other amounts then owed to dGF by dW under the Clearing Agreement.

E. If by April 1, 1974, dW has paid to dGF the sums referred to in paragraphs B.1., B.2. and B.3. above and if dGF's costs for the Services during the period April 1, 1974 through June 30, 1974 (inclusive of the costs referred to in Section 6(b)(iii)(C) of the Clearing Agreement for the month of April, 1974 only) were less than $3,000,000, then dGF promptly follow-

duPont Glore Forgan Incorporated
Attention: Morton H. Meyerson, Chairman

ing June 30, 1974 shall refund to dW the amount by which (i) $3,000,000 exceeds (ii) the sum of such dGF costs for such period plus any other amounts then owed to dGF by dW under the Clearing Agreement.

F. Nothing herein is intended to, nor shall it, modify or release (i) any obligation of dW to dGF under the Clearing Agreement other than dW's obligation under Section 6 thereof, or (ii) any right of dGF under the Clearing Agreement, including without limitation its rights under Section 8 thereof to retain under certain circumstances the $3,000,000 advance payment. Nor shall anything herein be construed as an assumption by dGF of any liability of dW, including, without limitation, any obligation of dW under its agreement of July 5, 1972, as modified on July 2, 1973 with E.D. Systems Corporation. Commencing March 1, 1974 dGF's sole obligations to make payments to dW, or to credit dW with sums, under the Clearing Agreement shall be as set forth in Paragraphs D and E above.

G. Promptly after the end of each month through June, 1974, dGF shall furnish dW with a detailed breakdown of dGF's costs incurred in performing the Services for such month.

Very truly yours,

duPont Walston Incorporated

By _____
Walter E. Auch, President

Attested To:

By _____
George Thomson, Chief Financial Officer

Accepted:

duPont Glore Forgan Incorporated

By _____
Morton H. Meyerson

Attested To:

By

352

Trustee in Bankruptcy for
duPONT WALSTON INC.
111 John Street
New York, N. Y. 10038

October 27, 1975

Mr. Duncan Jensby
Vice President
duPont Glore Forgan, Inc.
P. O. Box 386
Dallas, Texas 75221

Re: Account of Lincoln First Bank
(f/k/a Lincoln Rochester Trust
Company) - No. 44 - 501859

Dear Mr. Jensby:

We have recently learned that duPont Glore Forgan has sold from the above account, without the Trustee's knowledge or authorization, 500 shares of McIntyre Mines Limited. On the statement of this account dated February 28, 1975 such securities are listed as "long", and a debit balance of $11,354.71 is indicated.

It is the Trustee's position that, under the Clearing and Related Services Agreement dated as of July 2, 1973, the amount of the account debit is due and owing to the estate of duPont Walston Incorporated. Accordingly, we request that you remit the proceeds of the sale of such securities and that you furnish us with information relating to the sale, including its date and an indication of the authority by which it was made. The Trustee and Lincoln First Bank may then determine between themselves their respective rights in the proceeds.

Very truly yours,

Bruce E. Baker

rm
cc: Ronald Daitz, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for An Arrangement
of	:	No. 70 B 755
BLAIR & CO., INC.,	:	
Debtor.	:	MEMORANDUM OPINION

ROY BABITT, Referee:

Blair & Co., Inc., the debtor in possession and the New York Stock Exchange liquidator have moved for an order pursuant to Sections 3 and 4 of the United States Arbitration Act, 9 U.S.C.§§3 and 4, to compel the respondent, Margaret M. Cahn, a claimant in the pending insolvency proceedings involving Blair, to proceed to arbitration in accordance with the terms of her contract with Blair and in essence to continue the stay of the action now pending by her against Blair in the state court. The controlling facts are not genuinely in dispute despite the allegations contained in the first eight paragraphs of Cahn's answer.

Those facts are as follows:

In early 1959 Cahn contributed a secured note to Blair in order to increase its capital. That note was collateralized by marketable securities. Simultaneously with this transaction, Cahn and Blair entered into a collateral agreement setting forth the respective rights of Cahn and Blair. Among other things, Paragraph XIII[f] provided that any controversy arising out of that agreement or its breach was to be submitted to and settled by arbitration in accordance with the constitution of the New York Stock Exchange which sets up the mechanics for such arbitration.

On September 29, 1970, an involuntary petition in bankruptcy was filed against Blair. One day after the filing of that petition, Cahn began her action against Blair, its officers and directors, in the Supreme Court of the State of New York. That action was grounded in the claim that Blair had breached the collateral agreement. As an incident of the filing of the involuntary petition against Blair, this court stayed all suits, but that stay was subsequently modified so that Cahn could proceed against the other defendants but not against Blair. On April 15, 1971, Blair filed its petition for a Chapter

XI arrangement under Section 321 of the Bankruptcy Act, 11 U.S.C.§721, and as an incident to that petition, this court entered another order staying suits.[1]

Five months later, Cahn sought modification of the stay in order to permit her to proceed with pre-trial discovery against Blair. An order authorizing that relief was entered with direction that a hearing be held on Cahn's claim which she filed in this court and which was given Docket No. 10524 on the claims dockets of this court. That claim had been filed after the filingof the Chapter XI arrangement petition by Blair. The substance of that claim is basically the same as the gravamen of the action pending in New York State Supreme Court but stayed as we have already seen. The hearing in respect of Cahn's claim was adjourned to January 10, 1972 whereupon Blair interposed the instant motion which seeks determination of the merits of the claim before an arbitration tribunal as contemplated by Paragraph XIII[f] of the collateral

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1. The Blair proceedings in this court were referred to Referee Herbert Loewenthal. It has since been re-referred to me by order of Chief Judge Edelstein.

agreement between her and Blair.

Cahn's answer raises various defenses, all of which are pitched to the proposition that the motion to compel arbitration should be denied since Blair has waived the right of arbitration because, among other things, Blair cannot resort to a court of equity (which this court clearly is, Bank of Marin v. England, 389 U.S. 99, 103 (1966) as its hands are unclean, it is barred by laches and, in any event, is equitably estopped now to insist on arbitration at this stage.

The application by Blair and the liquidator is in all respects granted and all defenses raised by Cahn are overruled.

At the outset, it should be noted that the arbitration provision of the collateral agreement is perfectly clear on its face in respect of arbitration and Cahn wisely refrains from suggesting otherwise. In short, Paragraph XIII[f] is "not a narrow, confined clause, but a broad and wide-open undertaking to arbitrate." Sumaza v. Cooperative Association, 297 F. Supp. 345, 348 (D.C. Puerto Rico 1969). It is thus unnecessary to seek such construction of an ambiguity which will comport with the established policy in favor of arbitration. See Lundgren v. Freeman, 307 F.2d

104 (9th Cir. 1962). I note, however, that the policy in favor of arbitration is based on a desire to eliminate expense and delay of protracted court proceedings. Trafalgar Shipping Co. v. International Milling Co., 401 F.2d 568 (2d Cir. 1968). In any event, for whatever reason, the federal policy in favor of arbitration is part of the warp and woof of the fabric of our jurisprudence. Cf., Coenen v. R.W. Pressprich & Co., Inc., 453 F.2d 1209 (2d Cir. 1972). And any doubt that that policy is clearly applicable in bankruptcy proceedings is dispelled, not only by the plain agreement between the parties itself as here which this court recognizes, but also by this court's awareness that arbitration frequently may be an appropriate method for resolving controversies between trustees or debtors in possession and others. See General Order in Bankruptcy 33.

While it is true that a contract right to arbitration may be waived as may any other contract right, a party is held to have waived only when he actively participates in a law suit or takes other action inconsistent with the arbitration right. But there must be a substantial invocation of the litigation machinery for which arbitration is sought as an alternate. See

e.g., Cornell & Co., Inc., v. Barber & Ross Co., 360 F.2d 512 (D.C. Cir. 1966).

Certainly it cannot be said in the facts at bar that there has been such substantial invocation of the litigation machinery as to constitute a waiver, for waiver is not to be lightly inferred. Nor is inconsistent action in some respects a defense and any reliance on minor instances of inconsistencies miss the mark. Carcich v. Rederi A/B Nordie, etc., 389 F.2d 692 (2d Cir. 1968). It is the presence or absence of prejudice which is determinative of the issue, and none is demonstrated here. Mere participation in a law suit will not do to constitute a waiver for I recognize once more the overriding federal policy in favor of arbitration. So mere delay in seeking a stay of court litigation without a showing of prejudice, is insufficient. And, it must be noted, Blair has not resisted arbitration for Cahn has never sought it. All Blair did was obtain the sweeping stay which the Bankruptcy Act mandates in a bankruptcy proceeding and in a Chapter XI proceeding. Sections 11 and 314 of the Act, 11 U.S.C.§§29 and 714.

Cahn refrains from suggesting that Blair acted tardily in seeking a stay of her suit for it is

clear that almost simultaneously with the filing of the involuntary petition and then with the petition for an arrangement, orders were sought restraining, among others, Cahn's suit in the New York Supreme Court. Nor is Blair's tardiness in seeking to compel arbitration a defense. See Carcich v. Rederi A/B Nordie, etc., supra, at 696 including fn.8. Cahn has fallen far short of making a requisite showing to overcome the vigorous policy in favor of arbitration to which reference has been made. See Hilti, Inc. v. Oldach, 392 F.2d 368 (1st Cir. 1968). One thing more must be noted. The action of Blair in effectively blocking the continuation of Cahn's suit was the maximum beneficial relief to which it was entitled and it certainly cannot be said that by seeking the maximum relief in the early stages, it must be held to have waived its right to lesser relief now. This is particularly appropriate to note since Cahn filed a claim in these proceedings thereby in effect bringing the entire controversy before this court. Since the debtor could have objected to that claim at any time up to a period following confirmation of the debtor's arrangement (an event which has not yet occurred), it does not follow that by resorting to arbitration to determine

the merits of Cahn's claim, the debtor has been guilty of laches in not seeking it sooner in respect of the suit in New York, the prosecution of which was effectively foreclosed to Cahn in any case by the stay orders.

Settle order on notice.

DATED: NEW YORK, NEW YORK
May 12, 1972

Referee in Bankruptcy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

In the Matter :

of :

BLAIR & CO., INC., :

Debtor. :

- -X

70 B 755

MEMORANDUM and ORDER

Brieant, J.

The sole issue raised in this petition for review of an order of a referee in bankruptcy, brought by a claimant, Margaret M. Cahn, is the propriety of a ruling by the referee that she must submit her disputed claim to arbitration pursuant to the Constitution and Rules of the New York Stock Exchange. The order was made pursuant to §§3 and 4 of the United States Arbitrtation Act, 9 U.S.C.

I have reviewed the file and the opinion of the learned Referee, the Honorable Roy Babitt, and agree with the conclusions stated in that opinion.

The debtor, Blair & Co., Inc. was a member firm of the New York Stock Exchange. Claimant is a subordinated lender to debtor and became so pursuant to a written agreement secured by a

note and pledge of stock. The agreement made on or about February 28, 1969, contains what the learned Referee properly characterizes as an "arbitration provision...perfectly clear on its face in respect of arbitration...not a narrow, confined clause, but a broad and wide open undertaking to arbitrate" (Memo. Op. p.4).

Our clear public policy in favor of the enforcement of such clauses is well known and fully elucidated in the Referee's opinion. Claimant does not deny that she executed a written agreement to arbitrate.

An involuntary petition in bankruptcy was filed against Blair & Co., Inc. in this Court on September 29, 1970. One day previously, plaintiff verified a civil complaint in Supreme court, New York County, seeking damages against Blair & Co., Inc., and certain named individual officers and directors thereof, for breach of the agreement and fraud, by reason of their refusal to allow claimant, plaintiff there, to withdraw her collateral, and substitute cash. The complaint also charges conversion by unauthorized liquidation of the collateral and conspiracy. She also seeks equitable relief.

That litigation was stayed in Bankruptcy Court on October 2, 1970. On March 23, 1971, claimant was relieved from the stay to the extent of permitting her to pursue the individual defendants, but this has not been done. The stay was reimposed on April 23, 1971 as to the debtor, when it filed a petition for an arrangement under Chapter XI of the Act.

Claimant would avoid arbitration upon claims of waiver, default, laches and because of prior proceedings before bankruptcy referees. No such conduct by the debtor or its Liquidator, is found which would prevent arbitrration.

Delay in seeking arbitration, without a showing of prejudice, will not constitute a default or waiver. The debtor produced documents and submitted to discovery in bankruptcy court, pursuant to the direction of a referee, without apparent protest, but it conducted none. The proof of claim was filed August 19, 1971, and debtor and its Liquidator had until the confirmation of the proposed arrangement, an event which has not yet occurred to file objections. This time schedule was accelerated by the referee, but the application to compel arbitration was timely field, before the deadline for filing objections to the proof of claim.

Nor is the situation altered by the handwritten directions made by a referee at the foot of an order dated October 25, 1971. Fairly read, that provision contemplates that such hearing would be "...after objection thereto by the debtor..." but the referee doubtless knew no such objection had been filed. That claimant allegedly appeared, with witnesses, ready for trial on that date was not considered by the referee to be such conduct as to constitute a waiver, or default by debtor in asserting the contractual right to arbitrate. Waiver is generally an issue of fact, and the referee's finding, amply justified on the record, should not be disturbed on review.

After the decision of the referee directing arbitration, the claimant sought to have it conducted under American Arbitration Association rules, rather than under the aegis of the New York Stock Exchange. Her argument is that Exchange arbitration may be biased, because the debtor's Liquidator, Patrick E. Scorese was appointed by and receives compensation from the Exchange and has "direct financial and/or political connections" (Brief, p.22) with the Exchange. Further, if claimant prevails, she may assert a right to recover from a Special Trust Fund established by the Exchange to protect customers (not subordinated lenders) of the debtor.

A simple answer to this argument is that an objection to the financial or "political" interests of a panel member is now premature, and is not an objection to arbitration. The referee and this Court have ample remedy for claimant if the arbitration is not fairly conducted; the New York Stock Exchange regularly sponsors arbitration between members and non-members, apparently successfully and with justice. These problems were obvious to claimant when she signed the agreement to arbitrate. See Merritt, Chapman & Scott Corp. v. Penna. Tpk. Com'n, 261 F.Supp. 1, aff'd 387 F.2d 768 (3rd Cir. 1967) and authority therein cited.

A final comment should be directed to claimant's assertion that she will be delayed by arbitration. Claimant's pleading indicates such delay may be obviated by an order of the referee or Court. If so, the possibility of issuing such an order is favorably commended to the referee, so that this arbitration may become in effect, a preferred cause, but if such delay may not be obviated, it is no more than a normal consequence of a voluntary agreement to arbitrate in a congested tribunal.

The Order of Referee Babitt filed May 31, 1972 is

affirmed.

So ordered.

Dated: New York, New York
September 6, 1972

/s/ Charles L. Brieant, Jr.

CHARLES L. BRIEANT, JR.
U. S. D. J.

FILED

JUN 1 1973

ROY BABITT
FREE IN BANKR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for An Arrangement
-of-	:	No. 70 B 755
BLAIR & CO., INC.,	:	
Debtor.	:	OPINION

APPEARANCES:

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OF counsel.

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Of counsel.

ROY BABITT, Referee:

Blair & Co., debtor-in-possession (hereafter "Blair") and Scorese, its Stock Exchange Liquidator, have moved for an order staying this court's examination into the status and validity of the claim filed against Blair by Danford, the respondent in this dispute and for a further order directing arbitration of his claim pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

Before turning to the welter of papers filed in support of the motion and by Danford in opposition to it, it is necessary first to set the stage for this controversy by touching on the proceedings in this court involving Blair. These background facts are important in the focus of this particular controversy, but not necessarily material to its resolution, for the material facts, as will appear, are forthright and simple and in the view of this court, do not present a genuine issue of material fact with the result that there is no need for a trial, Applegate v. Top Associates, Inc., 425 F.2d 92 (2d Cir 1970), and the court may pass to the legal questions.

Until late September 1970 Blair was engaged in the

general brokerage business and maintained its principal office in New York City. On September 21, 1970, in order to satisfy the claims of customers as well as to effectuate the transferral and delivery of customers' securities, Blair entered into an agreement with the New York Stock Exchange (hereafter "The Exchange"). Under the terms of that agreement, the Exchange was given the power to appoint a liquidator should the trustees of the special trust fund of the Exchange make a loan to Blair or guarantee any of its outstanding obligations. It should be observed that that special trust fund had been established by the Exchange in 1964 for the purpose of avoiding bankruptcy to member firms "with attendant hardship to their customers and loss of confidence in the securities market". Constitution of the New York Stock Exchange, Article XIX, §1; In the Matter of Blair & Co., Inc., F.2d_____(2d Cir. #72-1554, Dec. 11, 1972), cert. granted _____U.S._____(1973).

On September 25, 1970 the trustees of the Exchange's special fund advanced $1,000 to Blair thereby triggering the appointment of Scorese as liquidator. His specific powers as liquidator are not relevant for purpose of the instant contro-

versy save to note that he was to act on behalf of Blair in the administration of its assets and properties, with particular regard to Blair's 25,000 or so customers.

Four days later an involuntary petition in bankruptcy was filed against Blair under the authority of Section 3a of the Bankruptcy Act, 11 U.S.C. §21(a), alleging three acts of bankruptcy, as to the first two of which no serious attempt was made to support them. In the Matter of Blair & Co., Inc., F.2d_____ supra, page 935 slip sheet opinion including fn. 2. The third act of bankruptcy asserted was that thought by the creditors to be contemplated by Section 3a(5) of the Act - the appointment of a receiver or trustee to take charge of the debtor's property while the debtor was insolvent or unable to pay its debts as they matured. It is unnecessary for purposes of this controversy to do more than brush lightly against the facts that followed Blair's involuntary submission to this court's jurisdiction save to note that the allegations of the third act of bankruptcy were sustained in fact and in law by the Referee and by the District Court on review. While that review to the District Court of the Referee's order was pending, Blair filed a petition for an arrangement

under Chapter XI of the Bankruptcy Act, Sections 301 et seq., 11 U.S.C. §§ 701 et seq. The particular section pursuant to which Blair filed its petition is Section 321, 11 U.S.C. §721, authorizing the filing of an arrangement petition during the pendency of a bankruptcy proceeding, here the one begun when the involuntary petition was filed. Blair was authorized to continue its business and manage its property as debtor-in-possession and the Stock Exchange Liquidator was authorized to continue in the discharge of the duties conferred on him by orders entered in October 1970. A stay of the administration of the bankruptcy was entered by Referee Loewenthal to whom this matter had been referred, and Blair has continued its course in the superseding Chapter XI arrangement proceedings to the extent that it has already filed its plan, has had that plan accepted by customers and creditors, and, in keeping with the statutory scheme, and save for pending objections to some of the claims filed by customers and/or creditors, is proceeding to confirm that arrangement. To keep the chronology complete, the Court of Appeals for this Circuit reversed the District Court judgment which was upheld the order of adjudication by the Referee and then denied rehearing en banc. The Supreme Court however has granted a writ of certiorari to the United States Court of Appeals for this Circuit. What is fur-

ther important to set the stage for what follows is that Danford filed a claim for over $1,800.000. against Blair. That claim was assigned #10,573 on the claims docket of this court. Danford's claim was based on his conclusion that Blair should return that amount for it is due him as a return of net equity in credit balance in his account at Blair as of March 1971 in that amount plus interest. It is plain that the thrust of Danford's claim is that he is entitled to non-subordinated customer status under the arrangement filed by Blair, for under it customers were offered and have agreed to accept 50% of their claims. Blair and the liquidator, on the other hand, take the position that Danford's claim was subordinated to the claims of Blair's unsubordinated creditors wi the result that, if Blair and liquidator are correct, Danford is not entitled to customer status and can accept no yield under Blair's arrangement. So much for the chronology of Blair's history in this court and the assertion of Danford's claim against it.

But more is necessary by way of background facts, these being those facts surrounding Danford's relationship to Blair in the first place. And so I turn to them. Through

1967 and for some forty years before, Danford had been employed as a registered representative or salesman at the brokerage firm of Schwabacher & Co. During those years Danford maintained an account with Schwabacher which, as of the end of 1967, had grown to an amount in excess of $1,500.000.

In December, 1967 Danford was asked to become a general partner of Schwabacher & Co. with an interest of 1/2 of 1% in return for an investment of $15,000. Danford accepted the offer by executing the necessary documents and became a general partner of the company. In December, 1967 Danford sought allied membership in the Exchange, an application which appears to have been favorably acted upon.

Danford's expectations of what his partnership in Schwabacher would mean were dashed in July 1968 when the Securities & Exchange Commission directed Schwabacher to restrict transfers from the customer accounts of its partners. Later that year Schwabacher was directed to sell most of its branch offices and/or to merge with another brokerage house. In February, 1969 Danford, and others similarly postured at Schwabacher executed the necessary documents by which it and Blair & Co. were merged. One of these documents was a

collateral agreement setting out Danford's rights in his account with Schwabacher insofar as the merger with Blair was to have any impact on it.

Danford then began an action against Schwabacher, some of its partners and Blair in the United States District Court for the Northern District of California, He alleged fraud and misrepresentation in connection with the circumstances by which he, Danford, became involved as a partner of Schwabacher and also by which Schwabacher and Blair merged.

A third series of facts is touched upon only because of a tangential relevance to this controversy between Blair and Danford. It appears that a class action had been brought by unsubordinated customers in the United States District Court for the Southern District of New York, entitled Herz, et al. v. Vanderbilt, et al., 70 Civ 5005, and assigned to District Judge Wyatt. That suit was brought against various officers and directors of Blair and against the New York Stock Exchange. From what has been shown this court, Judge Wyatt set up no special machinery to ascertain the class, but he appears to have left Danford free to vindicate

his standing aginst Blair before this, the Bankruptcy Court. The relevance of this class action is, according to Danford, that Judge Wyatt directed vindication of Danford's claim before the Referee regardless of whether or not arbitration was otherwise indicated.

In any event, standing on the threshold of confirmation of its arrangement, and recognizing the prima facie effect of Danford's huge claim, Section 57a of the Bankruptcy Act, 11 U.S.C. §93a, and resting on paragraph XIII (f) of Danford's collateral agreement with Blair, executed in February, 1969, calling for arbitration as well as Article VIII, Section 1 of the New York Stock Exchange Constitution, also calling for arbitration between allied members of the Exchange, Blair moved by order to show cause for an order pursuant to Section 3 and 4 of the United States Arbitration Act, 9 U.S.C. §§ 3 and 4, compelling Danford to submit the dispute with Blair upon which his $1,800,000 claim against it is bottomed to arbitration in accordance with the Rules and the Constitution of the New York Stock Exchange. By that motion, Blair further asked this court to stay proceedings before it in respect to the

vitality of Danford's pending claim.

It is observed that it was in February, 1969 that Danford applied to the New York Stock Exchange for allied membership, an application which was later granted. Danford's application for such membership in the Exchange among other things, stated that the applicant bound himself to abide by the Constitution and Rules of the Exchange and by all rules and regulations adopted under its Constitution, including Article VIII, Section 1 to the effect that any controversy between members or allied-members shall at the instance of either party be submitted for arbitration in accordance with the Constitution and the Rules of the Board of Governors. With Blair's motion to compel arbitration the battle of the affidavits began in earnest, for, apart from filing of an answer raising defenses, together with defenses, affidavits, rebuttal affidavits, reply affidavits and supplemental affidavits were filed by both sides. Notwithstanding the charge and counter-charge set forth in the welter of papers, the court is satisfied, as shall appear, that there are no issues of fact and that as a matter of law, Blair's motion to compel arbitration must be granted and Danford's defenses to frustrate

that result must be overruled.

The defenses raised by Danford are that Judge Wyatt in the 'Herz v. Vanderbilt' class action directed that Danford's status as a creditor be determined by the Referee, that Blair waived its right to seek arbitration, that Blair is estopped from seeking arbitration, that the provisions of the Constitution of the Exchange are inapplicable because neither Blair nor Danford is presently a member of the Exchange, that Danford could not receive a fair hearing before an arbitration panel composed of members of the Exchange and finally, and probably most importantly that Danford's application for allied membership in the Exchange and his Collateral Agreement which separately and together lie at the basis of Blair's resort to the arbitration machinery were obtained by fraud. Finally, Danford says that inasmuch as he alleges violation of the Securities and Exchange Acts of 1933 and 1934, the agreement relied on by Blair to compel arbitration is barred by the non-waiver provisions of Section 14 of the 1933 Act, 15 U.S.C. §77n, and by Section 29 of the 1934 Act, 15 U.S.C. §78cc.

At the outset, I find that the arbitration pro-

vision carried at paragraph XIII(f) of the February, 1969 collateral agreement is perfectly clear on its face in respect of the arbitration machinery to be resorted to, and Danford refrains, and wisely so, from suggesting otherwise. In short, paragraph XIII(f) is "not a narrow, confined clause, but a broad and wide-open undertaking to arbitrate". Sumaza v. Cooperative Association, 297 F.Supp 345, 348 (D.C. Puerto Rico, 1969). It is thus unnecessary for me to undertake construction of an ambiguity in order to find support for the established policy in favor of arbitration, Lundgren v. Freeman, 307 F.2d 104 (9th Cir. 1962). I note, moreover, that the policy in favor of arbitration is based on a desire to eliminate expense and delay of protracted court proceedings in keeping with what the parties agreed upon. See Trafalgar Shipping Co. v. International Milling Co., 401 F.2d 568 (2d Cir. 1968). In any event, for whatever reason, the federal policy in favor of arbitration is part of the warp and woof of the fabric of our jurisprudence, cf., Coenen v. R. W. Pressprich & Co., Inc., 453 F.2d 1209 (2d Cir 1972), any doubt that that policy is clearly applicable in bankruptcy proceedings is dispelled, not only by the plain agreement between the parties itself

as here and which this court recognizes, but also by this court's awareness that arbitration was considered, even by those who drafted the Bankruptcy Act to be an appropriate method for resolving controversies between trustees or debtors in possession and others. See Section 26 of the Act, 11 U.S.C. §49, and General Order in Bankruptcy 33.

Nor can Danford seriously contend that the dispute here does not involve commerce within the meaning of the National Arbitration Act. See Metro Industrial Painting Corp. v. Terminal Construction Co., 287 F.2d 382 (2d Cir 1961), to the effect that arbitration clauses should be read expansively to include disputes reasonably contemplated. cf., Coenen v. R. W. Pressprich & Co., Inc., supra. I am also satisfied that the underlying dispute between Danford and Blair is covered by the Arbitration Act and by the parties' purpose in their agreement. Accordingly, federal law governs to the extent that it creates a national substantive law encompassing all questions of interpretation and construction of arbitration agreements, Varley & Tarrytown Associates, Inc., F.2d, (2d Cir. April 23, 1973, Docket #72-2221), See also Coenen v. R. W. Pressprich & Co., Inc. supra., Robert Lawrence Co. v.

DeVonshire Fabrics, Inc., 271 F.2d 402 (2d Cir 1959) cert. dismissed 364 U.S. 801 (1960).

It is also clear that the agreement involved in this dispute between Danford and Blair is one "evidencing a transaction involving commerce" within the meaning of Sections 1 and 2 of the Arbitration Act, 9 U.S.C. §§ 1 and 2. It is plain that the sale of securities, Danford's area of endeavor, constitutes a transaction relating to commerce within the meaning of the National Arbitration Act, Coenen v. R. W. Pressprich & Co., supra. Similarly, a partnership agreement contemplating substantial interstate activity and business involving interstate commerce falls within the meaning of "commerce" carried in the Arbitration Act, Garfield & Co. v. Weist, 308 F.Supp. 1107 (S.D.N.Y. 1970), affirmed 434 F.2d 849 (2d Cir 1970), cert denied 401 U. S. 940 (1971).

Moreover, to come within the meaning of the Arbitration Act it is only necessary to show that the parties contemplated interstate activity, Metro Industrial Painting Corp. v. Terminal Construction Company, supra. at 387 (Lumbard, C. J., concurring). It is therefore, clear and the court so finds, that the contract which was essential

to completion of the merger between the two brokerage firms involved interstate commerce and purported to define Danford's right to deal with the securities in his own account, clearly interstate activity within the purview of the federal Arbitration Act.

I turn to those of Danford's defenses rooted in his claim that he was the victim of fraud perpetrated upon him and which fraud tainted his entire relationship with Schwabacher and Blair and with the Exchange.

In asserting fraud in the inducement of an agreement which turned out badly but which was entered into in the spirit of self-seeking optimism, it is clear that Danford challenges the entire sequence of events and not just the narrow agreement to arbitrate divorced as it were from everything else that took place between the litigants. Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967), means nothing if its essential significance is not a rejection of Danford's claim that he is entitled to have the issue of fraud litigated outside the arbitration mechanism agreed to by him and provided by The Stock Exchange for those allied with it.

In short, the Supreme Court there held that an ar-

bitrator must resolve a claim of fraud in the inducement of a contract controlled by the reach of the federal Arbitration Act in the absence of evidence that the parties intended to withhold that issue from arbitration. And, there is utterly no showing here that when Danford agreed to arbitrate, the parties contemplated that the issue of fraud would be withdrawn from the arbitrators. As the Supreme Court observed in Prima Paint, supra. at 400, Section 3 of the Arbitration Act requires a Federal Court in which suit has been brought on any issue referable to arbitration under a written agreement to arbitrate to stay such action pending arbitration once the court is satisfied that the issue is indeed arbitrable.

There is no doubt that the issue of fraud in the inducement of the entire agreement which underlies the relationship between Danford and Blair is arbitrable. Danford makes no real showing to support the bald claim that his defense that the arbitration clause itself, severable from all the other portions of the collateral agreement, was induced by fraud; his efforts to raise the question are designed more to overcome the clear holding of Prima Paint than they are to present a real issue to this court rather than to the arbitrators.

The short of it is that the statute does not "permit the Federal Court to consider claims of fraud in the inducement of the contract generally," 388 U.S. at 404. In arguing that the arbitration clause itself was part of an overall fraud which induced every other part of the collateral agreement, Danford merely repeats Justice Black's dissent, 388 U. S. at 408.

Danford does not deny executing the collateral agreement containing the arbitration clause in issue, nor does he allege a single act of fraud specifically and exclusively directed to the arbitration clause within the meaning of the Prima Paint ruling. Indeed, in arguing that the arbitration clause in the collateral agreement was fraudulently induced Danford merely alleges that that clause was part of an overall fraudulent scheme tainting everything else in the relationship. This by itself is insufficient to prevent arbitration between the parties in keeping with their agreement. It is, therefore, unnecessary to decide whether Danford's acceptance of benefits under the collateral agreement constitutes such ratification of his contract as to defeat even a clearly shown defense of fraud.

Blair insists, moreover, that Danford is obliged to arbitrate this dispute by virtue of his allied membership in the Exchange because of Article VIII, §1 of the Constitution of the Exchange which provides for arbitration of "any controversy between parties who are members, and allied members." To meet this assertion, Danford contends that his applications for Exchange membership were all part of the fraudulent scheme against him and, therefore, he cannot be considered as falling within the provisions of the Constitution to which I have just made reference.

Since the Constitution of the Exchange is a contract between each member and the Exchange itself, Coenen v. R. W. Pressprich & Co., supra.; Brown v. Gilligan, Will & Co., 287 F.Supp 766 (S.D.N.Y. 1968), there is no reason to suppose that the holding in Prima Paint has lost any of its vitality. Danford's attack on his own membership status for fraud will not frustrate arbitration where such claim of fraud is not directed specifically to the agreement to arbitrate. Danford does not deny allied membership in the Exchange and, save for his charge that his applications for such membership were part of an overall fraudulent scheme, he makes no effort to show

that the fraud alleged was specifically and narrowly directed at his agreement to arbitrate.

The status of membership itself is sufficient to bind the members to the Constitution of the Exchange including its provision for arbitration. Brown v. Gilligan, Will & Co., supra. at 769.

Danford presses his defense by alleging that he never knowingly agreed to arbitrate under the Constitution of the Exchange since his application merely incorporated the provisions of the Stock Exchange Constitution by reference and did not contain a separate arbitration clause. The signing of a pledge to abide by the Constitution is an agreement to arbitrate, and Coenen v. R. W. Pressprich & Co., supra. forecloses Danford's contrary view as a litigable issue.

Danford next seizes upon Wilco v. Swan, 346 U.S. 427 (1953), to the effect that Section 14 of the 1933 Securities Act and Section 29 of the 1934 Act preclude the enforceability of the instant agreement to arbitrate. Wilco v. Swan held that an agreement to arbitrate was unenforceable against a customer of a member firm against whom the "unwilling"

customer alleged violations of the 1933 Act.

The Supreme Court read Section 14 of the 1933 Act to forbid waiver of a right to select a forum for redress of grievances and, of course, allegations of violations of provisions of the Securities & Exchange Act were taken as true for purposes of determining whether arbitration is to be denied because of the non-waiver provisions of those Acts. Maheu v. Reynolds & Company, 282 F.Supp 423 (S.D.N.Y. 1967).

But, in making such assertion, Danford is not writing on a clean slate for Brown v. Gilligan, Will & Company, supra, held the non-waiver provisions of the Securities & Exchange Acts of 1933 and 1934 and the holding of Wilco v. Swan, supra, inapplicable where the dispute was between parties both of whom are members of the Exchange and not the obviously unequal situation between a customer and member which was present in Wilco. Coenen v. R. W. Pressprich & Company, supra., Axelrod & Co. v. Kordich, Victor & Newfield, 451 F.2d 838 (2d Cir. 1971); Rust v. Drexel Firestone Inc., F.Sup . (S.D.N.Y. 1972).

The question here is whether Danford is a customer within the protection conferred by the Supreme Court in Wilco

v. Swan or whether he is a member, subject to the agreement he made to arbitrate, under Brown, v. Gilligan, Will & Company, supra, and its progeny. Danford refrains from suggesting that he was not a member of the Exchange but seeks to distinguish Brown, Coenen, and Axelrod, all supra, by asserting that in those cases the party resisting arbitration did not litigate his status as a member which, Danford claims, he now does on his allegation that his membership status was procured by fraud.

But, the bald assertion of fraud practiced on this experienced individual who should, after nearly half a century in the securities business, be considered as a somewhat sophisticated elder statesman, is palpable. His business acumen is disclosed by the financial success he has had in his chosen field of endeavor and his efforts to proclaim such wide-eyed innocence that his will was overborne fail. Villani v. New York Stock Exchange, 348 F.Supp 111 (S.D.N.Y. 1972),

Danford next argues that the arbitration provisions of the Exchange's Constitution are not applicable since neither he nor Blair is now a member of the Exchange.

Isaacson v. Hayden, Stone, Inc., 319 F.Supp. 929 (S.D.N.Y. 1970) forcloses reliance on that claim on its holding that the arbitration provision is applicable to former members since the controversy flows from and is predicated on the business relationship between the parties which arose during membership, 319 F.Supp. at 930. See also Coenen v. R. W. Pressprich & Co., supra; Ayres v. Merrill, Lynch et al., F.Supp. (D.C.E.D. Pa. 1973).

The remainder of Danford's defenses may be disposed of quite readily. The defense that Blair has delayed in seeking arbitration is insufficient to constitute waiver. Carcich v. Rederi A/B Nordie, 389 F.2d 692 (2d Cir. 1968). There has been no such substantial invocation by Blair of this court's litigation machinery as to constitute a waiver, for waiver is not to be lightly inferred. Nor is inconsistent action in some minor respects a defense, and any reliance by Danford on such minor instances of inconsistency misses the mark. It is the presence or absence of prejudice which determines that issue and none is demonstrated here.

Indeed, Danford's claim that he is on the verge of octogenarian status does not avail him for if we proceed

on the premise that the policy in favor of arbitration is based on a desire, inter alia, to avoid the delay of protracted court proceedings, Trafalgar Shipping Co. v. International Milling Co., 401 F.2d 508 (2d Cir. 1968), then it follows that speed and expedition is more likely on resort to the arbitration process. And, it must be noted, Blair has not resisted arbitration for Danford has never sought it. All Blair did was procure the sweeping stay which the Bankruptcy Act mandates in a bankruptcy proceeding and in a Chapter XI proceeding, Sections 11 and 314 of the Act, 11 U.S.C. §§ 29 and 714, so that things could remain in status quo while the bankruptcy processes determine the priorities of Blair in relation to its customers and creditors. And, Danford refrains, and again wisely, from suggesting that Blair acted tardily in staying his suit in California. See Murray Oil Products Co. v. Mitsui & Co., 146 F.2d 381, 384 (2d Cir 1944).

Danford falls far short of making the requisite showing to overcome the vigorous policy in favor of arbitration to which reference has been made. Hilty, Inc. v. Oldach, 392 F.2d 368 (1st Cir. 1968); In the Matter of Blair & Company, Inc., (Babitt, Referee, 2/12/72), affirmed

September 6, 1972, Brieant, D.J.

Reference has already been made to the Herz v. Vanderbilt dispute settled by District Judge Wyatt. Danford seizes on a statement by Judge Wyatt and by counsel to Blair in support of his assertion that Judge Wyatt directed litigation in this court and that Blair acquiesced. Once more, Danford falls short of the mark, for Judge Wyatt did no more than conclude that this court should assume jurisdiction in the event Blair filed a Chapter XI petition which it would anyway.

Certainly, Judge Wyatt could not amplify this court's jurisdiction beyond what Congress gave it nor could he pass on the merits of a controversy between Blair and Danford which had not yet arisen. All that Judge Wyatt did, and his statement, fairly read, supports this construction, is to note that in the event certain procedures were followed, this court would have jurisdiction over the disputants. But, such jurisdiction includes sending such controversy to an appropriate arbitration forum in keeping with the broad policy in favor of arbitration particularly where not incompatible with the Bankruptcy Act itself. And the statement by Blair's counsel would indicate nothing less. Moreover, it must be

observed, Blair was not a party to that litigation. In short, all that Judge Wyatt did was leave the parties free to thrash out their claims in Blair's Chapter XI proceeding and nothing in the record before Judge Wyatt supports Danford's claim that Blair's present counsel waived defenses which could be made to a Referee with jurisdiction over a debtor.

Insofar as Danford contends that he should not be compelled to arbitrate because of the possibility of bias on the part of the Stock Exchange arbitrators who, he says, have a financial interest in the dispute, such claim is premature. Bias may be raised in connection with the award, not now to preclude it. Petition of Dover Steamship Co., 143 F.Supp 738 (S.D.N.Y. 1956). Nor does Commonwealth Coating Corp. v. Continental Casualty Co., 393 U. S. 145 (1968) require a contrary result for that case involved review of a lower court's judgment not to vacate an award already made.

There is ample basis for this court to stay resolution of the dispute between Danford and Blair articulated in Danford's claim filed here and to leave its resolution to what is hoped prompt disposition by the arbitrators.

Insofar as Danford's claim of nearly two million

dollars remains pending, it potentially inhibits confirmation of Blair's arrangement. It follows that Blair's arrangement may be threatened unless prompt action is taken. Technically speaking it may be that Blair has not shown itself to be a party aggrieved by the failure, neglect or refusal of Danford to arbitrate with a narrow reading of the language of 9 U.S.C. §4. Cf., Fremont, Cake & Meal Co. v. Wilson & Co. 86 F.Supp 968 (D.C. Neb. 1949), affirmed 183 F.2d 57 (8th Cir. 1950). However I find no surer indices of Danford's refusal to arbitrate than his efforts to press his suit in California to the extent of ignoring a stay of this court, noted in a previous opinion filed on an application to punish him for contempt, and by the efforts he has put forth in this dispute to resist arbitration.

An order is to be settled on notice staying other proceedings and compelling Danford to proceed to arbitration on his dispute with Blair.

DATED: New York, New York

JUNE 1, 1973

Lowell Bobbé

Referee in Bankruptcy

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT,	:	
Plaintiff,	:	75 Civ. 3214 W.K.
- against -	:	AFFIDAVIT IN SUPPORT OF MOTION TO STAY
H. ROSS PEROT, et al.,	:	ACTION IN FAVOR OF REQUIRED ARBITRATION
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN J. SENKEWICH, being duly sworn, says:

1. I am an Assistant Vice President of defendant New York Stock Exchange, Inc. (the "NYSE"). I make this affidavit in support of the motion of certain defendants to stay this action on the ground that arbitration is required of the controversy comprehended by the complaint. The facts hereinafter stated are either known to me or derived from the records of the Exchange.

2. duPont Walston Incorporated ceased to be a member organization of the NYSE on March 11, 1974.

/s/ John J. Senkewich
John J. Senkewich

Sworn to before me this
7 day of November, 1975

/s/ John Bolos, Jr.
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated, Plaintiff, -against- H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, du PONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E.D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR and D. TIPP CULLEN, Defendants.	75 Civ. 3214 (WK) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER J. ARMSTRONG, being duly sworn, deposes and says:

1. I am the Secretary of the American Stock Exchange Inc. ("Amex"), and I make this affidavit based on a review, which I caused to be made, of the Amex membership records.

2. Those records show that on March 11, 1974, duPont Walston Incorporated (formerly Walston & Co., Inc.) retired from the Amex as a regular member corporation. Annexed hereto as Exhibit 1 is a photocopy of the pertinent pages of the March 15, 1974 Amex Weekly Bulletin wherein the retirement of said corporation from the Amex was

officially reported.

PETER I. ARMSTRONG

Sworn to before me this

5th day of November, 1975

Notary Public

ARLENE M. ROGERS
Notary Public, State of New York
No. 41-3323825
Qualified in Queens County
~~Certificate filed in New York County~~
Commission Expires March 30, 1977

American Stock Exchange

American Stock Exchange, Inc.
86 Trinity Place
New York NY 10006
212/938-6000

EXHIBIT 1

Secretary's Office
March 15, 1974
(Data received up to 9:30 A.M.)

Memberships Transferred

March 14, 1974

Stanley G. Theodorous to Barclay Douglas
Diamond Douglas & Co., Inc.
Turks Head Building
Providence, Rhode Island
02903

Carmine T. Marra to Stanley G. Theodorous
Wheat, First Securities, Inc.
One New York Plaza
New York, New York 10004

Elected to Associate Membership

March 14, 1974

G. Anthony Morse, Jr.
G. A. Morse & Company, Inc.
6 West Druid Hills Drive, N.E.
Atlanta, Georgia 30329

Resigned as Associate Members

Kurt H. Grunebaum—effective March 13, 1974
Milton Levine—effective March 18, 1974

Changes in Member Organizations

**Advest Co.

*Arthur D. Halpern, *Rosario Ingallinera, #Milton Levine, #George B. Kendall, #Harold B. Weinstock, #Richard C. Wolfe, #Stanley J. Goldring, #August H. Weil, #Edward F. Leibert, #Warren F. Pavlik and #Thomas C. Sorensen to be admitted March 15, 1974.

Charles Levine, Herbert Buschman, Lawrence Beatus, Basil Skelos, Vincent C. Ross, Jr., Nathan S. Gindi, Larry Grossberg, Ernest S. Heller, Rose Fine Heller, Milton Kadison, Norman Kadison, David E. Lavin and Lewis Levine, Limited Partners, to be admitted March 15, 1974.

Gertrude Furman, Limited Partner and Subordinated Lender, to be admitted March 15, 1974.

Doris Prince Beatus, Howard Z. Beatus, Jay Furman, Eugene M. Lang, Sally Lavin, Robert P. Murray, Alfred P. Slaner, Ida Zirkin Small and Sander B. Weinstock, Subordinated Lenders, to be admitted March 15, 1974.

Mary W. Peck and Antoinette L. Reiffel, Debenture Holders, to be admitted March 15, 1974.

†American Securities Corporation

Thomas J. Hogan, III, Assistant Vice President, admitted March 14, 1974.

Barry J. Demovsky, Vice President, admitted March 14, 1974.

**Birr, Wilson & Co., Inc.

Nicholas J. DeJohn, Assistant Vice President and Non-Voting Stockholder, resigned February 1, 1974.

**Chaplin, McGuiness & Co., Incorporated

#James C. Chaplin, IV, Vice President, Treasurer, Director and Voting Stockholder, resigned February 28, 1974.

Paul V. Anderson, Vice President and Non-Voting Stockholder, resigned February 25, 1974.

**Clark, Dodge & Co. Incorporated

Richard A. Cawley, Assistant Vice President and Voting Stockholder, resigned February 22, 1974.

**Diamond Douglas & Co., Inc.

*Stanley G. Theodorous, Vice President and Voting Stockholder, resigned March 14, 1974.

**Dominick & Dominick Incorporated

James V. Sclafani, Assistant Vice President, resigned March 1, 1974.

**Eppler, Guerin & Turner, Inc.

Raymond R. Trollinger, Jr., Vice President and Non-Voting Stockholder, resigned March 1, 1974.

**Evans & Co., Inc.

#Robert S. Evans, Vice President, Director and Voting Stockholder, resigned February 15, 1974.

**Faulkner, Dawkins & Sullivan, Inc.

Carl J. Kreitler, Jr., Senior Vice President and Voting Stockholder, resigned March 15, 1974.

†First Boston Corporation

#Carl F. Cooke retired as a Senior Vice President but continues as an Approved Person, Director and Voting Stockholder December 31, 1973.

**Hayden Stone Inc.

Creed F. Alderson, Vice President and Voting Stockholder, resigned February 13, 1974.

**Kidder, Peabody & Co. Incorporated

Donald P. Remey, Vice President, resigned February 1974.

**Loewi & Co. Incorporated

#William L. Liebman, President, Director and Voting Stockholder, also became Vice Chairman of the Board January 1, 1974.

#Ernest F. Rice, Jr., Executive Vice President, Director and Voting Stockholder, also became Chairman of the Executive Committee and Secretary January 1, 1974.

#Howard J. Dewes, #Theodore R. Grenier, #David H. Klann and #Richard A. Parker, Directors and Voting Stockholders, also became Senior Vice Presidents January 23, 1974.

**Mack, Bushnell & Edelman, Inc.

Jean Francois Bernheim, Senior Vice President and Voting Stockholder resigned March 5, 1974.

†McMaster Hutchinson & Co.

Barry J. Demovsky, Vice President and Voting Stockholder, resigned December 31, 1973.

**Michael, Bregman & Co.
Donald P. Parson retired as a Limited Partner and became a Subordinated Lender December 6, 1973.

**Mid-Southwest Securities, Inc.
#Till A. Petrocchi retired as a Director and Voting Stockholder February 4, 1974 but continues as a Vice President.

**Paine, Webber, Jackson & Curtis Incorporated
Lloyd W. Mason, Vice President and Voting Stockholder, resigned January 31, 1974.
G. Richard Cronin, Vice President and Voting Stockholder, resigned March 1, 1974.
Scott R. Lawson, Vice President, resigned February 22, 1974.
Duane Roberts, Vice President, resigned March 1, 1974.

**Parker/Hunter Incorporated
William F. Lackner, Vice President and Voting Stockholder, retired January 31, 1974.

**Pressman, Frohlich & Frost Incorporated
Lewis Cohen and Robert Shore, Vice Presidents, resigned March 1, 1974.

**Roberts, Scott & Co., Inc.
Ian Gardner-Smith, J. William Sibel and Judy Thompson, Vice Presidents and Voting Stockholders, resigned March 1, 1974.

†**Sartorius & Co.
*Jack A. Sullivan, Jr. retired March 15, 1974.

**Shields & Company Incorporated
Robert G. McCausland, Vice President, retired January 31, 1974.

**Wheat, First Securities, Inc.
*Stanley G. Theodorous, Vice President and Voting and Non-Voting Stockholder, admitted March 14, 1974.

Notice to Member Organizations

In connection with the above changes, member organizations are reminded to furnish promptly allied member applications, corporate documents and amended partnership agreements to the Exchange's Membership Services Division, attention of Thomas F. Concannon, Assistant Vice President.

Retirement of Regular Member Corporation

duPont Walston Incorporated—effective March 11, 1974

Retirement of Associate Member Corporation

New York Hanseatic Corporation—effective March 13, 1974

Retirement of Regular Member Firm

Sartorius & Co. will cease to do business as a member firm, effective March 15, 1974. Its business will be continued by the Sartorius division of Advest Co.

New Associate Member Corporation

Morse (G. A.) & Company, Inc.
(Effective March 14, 1974)
6 West Druid Hills Drive, N. E.
Atlanta, Georgia 30329

Holders of Voting Stock

‡G. Anthony Morse, Jr. ... President, Treasurer and Director
#Paul J. Keeler, Jr. ... Vice President, Secretary and Director
#William J. Tapert ... Vice President and Director

Subordinated Lender

Investment Data Corporation

New Addresses

*Arthur D. Halpern, Advest Co., 115 Broadway, New York, New York 10006
*Rosario Ingallinera, Advest Co., 115 Broadway, New York, New York 10006
*Jack A. Sullivan, Jr., 55 East End Avenue, New York, New York
*John M. Varesio, Muller and Company, 25 Broad Street, New York 10004
‡Marvin Weiselberg, Muller and Company, 25 Broad Street, New York, New York 10004
‡**Muller and Company, 25 Broad Street, New York, New York 10004

#Allied Member.
*Regular Member.
**Regular Member Firm or Corporation.
†Associate Member Firm or Corporation.
‡Associate Member.

List No. 37-A of Non-Member Brokers Qualified to Receive a 40% Discount Under the Revised Program

Bourse Securities, 1 Penn Plaza, New York, New York 10001
Collins (Julien) & Company, 230 West Monroe Street, Chicago, Illinois 60606

Current Reports to be Made to the Exchange

Members' attention is called to the fact that the following reports are to be made to the Exchange within the coming week:

Report	Due on or before
Form 50—"Short" Position (as of close Friday, February 15—Clearance Date) Trade Date of Friday, March 8	No later than Noon, Tues. Mar. 19
1-RA (Members and Member Organizations. Weekly report of transactions for accounts of members or member organizations for the week ending Friday, March 15)	Thurs. Mar. 21
1-S (Weekly report of round lot short sale transactions for all accounts by clearing member organizations for the week ending Friday, March 15)	Thurs. Mar. 21

2/6/76

COPY

U.S. DISTRICT COURT
FILED
FEB 6 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Plaintiff,

- against -

H. ROSS PEROT, et al.,

Defendants.

- -x

MEMORANDUM AND ORDER

75 Civ. 3214

#43851

KNAPP, D.J.

This is a motion for a protective order which would postpone a scheduled deposition until after this court's disposition of a motion to compel arbitration. Ordinarily such a protective order would be granted as of course. Lummus Co. v. Commonwealth Oil Refining Co. (1st Cir. 1959) 273 F.2d 613, 614. However, plaintiff resists on the basis of a stipulation agreeing to the taking of the deposition of this witness and that of one Robson. Robson is now in the hospital and will apparently never be available for deposition. Upon oral argument, I became satisfied that the stipulation in question primarily concerned the witness Robson, the name of the present witness being included just as a matter of convenience. The protective order is,

accordingly, granted, and the deposition of Peterson will be stayed pending disposition of the motion to compel arbitration, unless the proposed witness Robson should recover sufficiently to be examined, in which event the depositions of both witnesses shall proceed in accordance with the stipulation.

SO ORDERED.

Dated: New York, New York
February 4, 1976.

WHITMAN KNAPP, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Plaintiff,

- against -

H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E.D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR, and D. TIPP CULLEN,

Defendants.

- -x

MEMORANDUM AND ORDER

75 Civ. 3214

44237

A P P E A R A N C E S :

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Of Counsel

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1 Chase Manhattan Plaza
New York, New York 10005
By: RUSSELL E. BROOKS, ESQ.,
STEPHEN KOWITT, ESQ.
Of Counsel

MICROFILM
APR 15 1976

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Of Counsel

CARTER, LEDYARD & MILBURN
Attorneys for Allen Blair; Douglas E. DeTata; John J. Doughty
2 Wall Street, New York, New York 10005

KNAPP, D.J.

Sixteen of the twenty defendants [1] (hereinafter referred to as the "Perot" group) in this complex securities action growing out of the bankruptcy of the securities brokerage firm of duPont Walston Inc. ("Walston") have moved pursuant to the federal Arbitration Act (9 U.S.C. §3) for an order staying all proceedings herein pending arbitration as allegedly required by the constitutions of the New York and American Stock Exchanges and other agreements between the parties. The defendant New York Stock Exchange has also moved to stay the action as to it and to compel arbitration. The plaintiff trustee in bankruptcy opposes these motions on a number of grounds, none of which are persuasive and the motions are, accordingly, granted.

Factual Background

This action was commenced on July 1, 1975 by the Trustee [2] against 20 defendants, including 14 individuals, 5 corporations (including the New York Stock Exchange) and 1 partnership, asserting claims under federal and state securities laws, state statutory and common laws, and the federal bankruptcy statute. All of these claims arise out of and result from the July 2, 1973 realignment of the businesses of Walston and defendant duPont Glore Forgan Inc. ("DGF"), both of whom were member corporations of the New York and American Stock Exchanges ("NYSE" and "Amex", respectively). The realignment - whereby Walston assumed all front office operations of the two firms

and DGF assumed all of the back office functions - was effected by means of a series of Realignment Agreements, instigated by the defendant H. Ross Perot, who had invested heavily in DGF and was a minority shareholder in Walston. The remaining defendants in this action are: PHM & Co., which owns the majority of the stock of DGF; the following partners of PHM & Co.: Milledge A. Hart, III and Morton H. Meyerson; the following directors of Walston who voted for the realignment: Daniel J. Cullen, William D. Fleming, George T. Thomson, Charles W. Cox, Douglas E. DeTata, John J. Doughty, Allan Blair; D. T. Cullen, William K. Gayden and Mervin L. Stauffer; Charleston Investment Co., which had a $15 million investment in Walston; Margot Perot, who owned the common stock of Charleston; Electronic Data Systems Corp., a computer company owned by Perot which had a data processing contract with DGF; E. D. Systems Corp., a subsidiary of Electronic Data Systems, which had a data processing contract with Walston; and the NYSE, of which Walston and DGF were member corporations - as were most of the other defendants as well - and which approved the realignment.

The essence of the complaint can be distilled into three categories of claims against these defendants: a) that they conspired to mislead Walston into approving the realignment transaction and executing the Realignment Agreements; b) that DGF breached said Agreements; and c) that certain defendants misappropriated Walston's

assets in effectuating the realignment, leading to Walston's financial collapse and eventual demise. The Trustee seeks compensatory damages of not less than $45 million, as well as punitive damages against certain of the defendants.

By the present motion, the Perot defendants seek to compel the Trustee to arbitrate his claims against them in the first instance. They point to three sources upon which they assert a right to arbitrate:

(1) Two separate provisions in the NYSE and Amex constitutions, both of which mandate arbitration of controversies between present and former members or allied members - Walston and 12 of the defendants so qualify (NYSE Constitution, Art. VIII, §1; Amex Constitution, Art. VIII, §1).

(2) The NYSE constitution provision granting the defendants who are non-members the right to compel Walston to arbitrate all claims against them arising out of the business or dissolution of Walston - 7 defendants qualify under this provision (NYSE Constitution, Article VIII, Section 1).

(3) The additional arbitration clause in the Realignment Agreements requiring arbitration of disputes involving the Realignment Agreements or the transaction

contemplated by the Realignment Agreements (Article 10.11 of Master Agreement to Realignment Agreements).

The NYSE itself, although concededly not entitled as of right to compel arbitration of the claims against it, also seeks to stay the action as to it on the grounds that an arbitration would resolve many of the issues in the action and may even render it moot, and that failure to stay the action as to it would result in duplicative effort and create the possibility of inconsistent results.

The Trustee opposes the Perot motion to compel arbitration on essentially four grounds:

I. Having rejected all contracts containing arbitration clauses pursuant to §70(b) of the Bankruptcy Act, the Trustee is relieved of any duty to arbitrate.

II. The arbitration clauses in the Exchange constitutions and the Master Agreement are unenforceable.

III. A stay cannot be granted because the complaint contains numerous non-arbitrable claims under the federal securities and bankruptcy laws.

IV. Any right to arbitrate has been waived.

With respect to the NYSE motion, the Trustee argues that the Exchange has not made the requisite showing of hardship or inequity and that a stay would severely prejudice the estate.

Because of the multiplicity of grounds alleged, this opinion will treat each separately, in the order mentioned above.

Perot Motion

I. Whether the Trustee's rejection of all executory Walston contracts pursuant to §70(b) of the Bankruptcy Act relieves it of any duty to arbitrate enunciated therein.

The constitutions of both the NYSE [3/] and the Amex [4/] contain explicit provisions mandating arbitration of any and all controversies between parties who are members, allied members, member firms and member corporations arising out of their business if any party should so elect. Exchange members automatically become bound by these provisions - incorporated in the respective constitutions pursuant to the self-regulatory duties imposed upon the exchanges by §6 of the 1934 Act - upon entering into stock exchange membership. The cases are unanimous in holding that NYSE and Amex members, member corporations and allied members are bound by the arbitration provisions, regardless of the subject matter or source of the dispute. Coenen v. R. W. Pressprich & Co., Inc. (2d Cir. 1972) 453 F.2d 1209, 1211; In Re Revenue Properties Litigation Cases (1st Cir. 1971) 451 F.2d 310, 313, Legg, Mason & Company v. Mackall & Coe, Inc. (D. D.C. 1972) 351 F.Supp. 1367, 1371, Isaacson v. Hayden, Stone, Inc. (S.D.N.Y. 1970) 319 F.Supp. 929, 930, Brown v. Gilligan, Will & Co. (S.D.N.Y. 1968) 287 F.Supp. 766, 769-70. See also, Ghiron v. Mayer (1st Dept. 1963) 241 N.Y.S.2d 144 19 App. Div. 2d 54, Osborne & Thurlow v. Hirsch & Co. (Sup. Ct. N.Y. Co.

1958) 172 N.Y.S.2d 522, 10 Misc. 2d 225. Accord, two unreported decisions involving DGF Inc. and the very same arbitration provisions, Hirsch v. F. I. duPont, Glore Forgan & Co., Index No. 11514/72 (Sup. Ct. N.Y. Co. 2/1/74) and Fraiman v. F. I. duPont, Glore Forgan & Co., Index No. 23712/72 (Sup. Ct. N.Y. Co. 3/15/73). The rationale for this rule is that §6 of the 1934 Act, 15 U.S.C. §78f "gave securities exchanges extensive powers of self-regulation, imposing the responsibility for enforcement of the rules upon the exchanges themselves". Legg, Mason & Co., Inc. v. Mackall & Coe, Inc. (D. D.C. 1972) 351 F.Supp. 1367, 1371. Furthermore, as noted by the Second Circuit in Coenen, supra, at 1212,

> "The purpose behind the drafting of such a broad arbitration clause was, as much as possible, to keep disputes between members out of the courts".

In addition to the constitutional provisions discussed above, the Realignment Agreements - which are central to all of the Trustee's claims - contain an express arbitration clause providing for the arbitration of any and all disputes arising under the Agreements.

Notwithstanding the existence of these three arbitration clauses, nor their concededly general applicability to the parties at hand,[6/] plaintiff nevertheless contends that he is relieved of any duty to arbitrate by virtue of his special status as a trustee in bankruptcy. More specifically, under the power conferred on him by §706 of the

Bankruptcy Act, 11 U.S.C. §110(b), to reject executory contracts of the bankrupt, the Trustee claims to have rejected all of the Walston "contracts" on which the defendants rely, thereby relieving himself of any duty to arbitrate defined therein. The weakness in such a positic is that it rests on a false assumption: namely, that the various arbitration clauses constitute "executory contracts". Under none of these contracts was there any benefit or asset left for the Trustee to relinquish, nor any performance left to be completed, at the time of the bankrupt's adjudication. On March 11, 1974 - 16 days prior to filing its petition under Chapter XI and 79 days prior to its adjudication as a bankrupt - Walston gave notice to the NYSE and Amex that it was terminating its memberships. By May,1974 - the time of its adjudication - Walston had ceased doing any business under the rules of any exchange. Accordingly, under the "contracts" contained in the NYSE and Amex constitutions, there was no benefit or asset left for Walston or the Trustee to assume or reject, and no performance in futuro was required or expected of Walston or the Trustee. Once a contract has either been terminated or materially breached prior to adjudication in bankruptcy, the contract ceases to be executory for purposes of Section 70b. Tobin v. Plein (2d Cir. 1962) 301 F.2d 378, 381 Crittenden v. Lines (9th Cir. 1964) 327 F.2d 537, 542-543. Nor can the inclusion in an otherwise nonexecutory contract of an agreement to arbitrate that extends into the future render such contract executory.

Id. An agreement to arbitrate does not create an obligation to perform in futuro, but rather, constitutes merely an acknowledgment that should one elect to sue, one consents to confine the dispute to a particular forum or form of proceeding. 7/

The same considerations apply with equal force to the arbitration clause in the Realignment Agreements, which by their own terms are written memoranda of a sequence of events and agreements already completed. Walston no longer had any obligation to perform in futuro thereunder, particularly in light of the fact that its entire business had disappeared long before adjudication. More importantly, the Trustee has in point of fact not rejected said Agreements; witness Counts XV and XVI of the complaint, which seek recovery on DGF's alleged failure to perform its obligations under the Agreements.

The cases cited by the Trustee in support of his position that he has the power to reject contracts requiring arbitration are inapposite, for they all involved contracts which were concededly executory. Equally significant is the fact that in each instance, a creditor was seeking to enforce rights against a bankrupt's estate through arbitration, and thereby creating the potential of a distribution preference as against other creditors - a situation which the courts are understandably anxious to avoid. The underlying rationale of each court's decision to ignore the arbitration clause was that

exclusive jurisdiction over claims against the bankrupt - not by the bankrupt, as in the instant case - must lie in one forum - the bankruptcy court - in order to assure the statutory goal of non-preferential distribution to all of the bankrupt's valid creditors. Thus, in those instances where the trustee in bankruptcy has been a plaintiff rather than a defendant, the courts have held that arbitration is appropriate. Tobin v. Plein, supra, Schilling v. Canadian Foreign Steamship Co. (S.D.N.Y. 1961) 190 F.Supp. 462. This is consistent with the "overriding federal policy favoring arbitration" [Carcich v. Rederei, a/b Nordie (2d Cir. 1968) 389 F.2d 692, 696] not simply in general commercial litigation, but in bankruptcy matters as well. Fallick v. Kehr (2d Cir. 1966) 369 F.2d 899, 903-4; General Order in Bankruptcy 33, In the Matter of Blair & Co. (Cahn), 70 B 755 (S.D.N.Y. 5/12/72) (Babitt, J. at p. 5), aff'd, by Brieant, J., 9/6/72.

II. Whether the Three Arbitration Provisions are Enforceable

A. Disqualification of Forums

The Trustee seeks to avoid enforcement of the 3 arbitration clauses on the alternative ground that the specific forums selected - the NYSE and the Amex, respectively - are disqualified to serve as forums by reason of their alleged involvement with the instant case. The NYSE is a named defendant, charged with making false statements of material fact in violation of §10b of the 1934 Act and of knowingly permitting a fraudulent scheme to be imposed upon Walston in violation

of its self-regulatory duties under §6 of the 1934 Act. Since the defendants have agreed that, under such circumstances, any arbitration in this case "should not be held under NYSE auspices",[8/] in order to "avoid even the appearance of bias",[9/] we shall not discuss the matter further except to say that we concur.

Unlike the NYSE, however, Amex has not been named as a party defendant. Nevertheless, the Trustee somewhat belatedly argues that the Amex would be in an "awkward" position if it were to hear and decide the claims in this case, since it too reviewed and approved the subject Realignment Agreements. The Trustee's failure to sue the Amex undermines this argument; if he genuinely thought or even suspected that he had a claim against the Amex, he would be derelict in his duty and potentially liable on his bond not to name it as a party defendant. Consequently, the Court is not persuaded by this belated claim of bias. Klebanow v. Ira Haupt & Co. (Sup. Ct., N.Y. Co. 1964) (Index No. 1105/64) (unreported). Even if we were, however, Article VIII, Section 2(c) of the Amex constitution provides for the alternative forum of the American Arbitration Association, as to which neither party can make any claims of bias.[10/] Moreover, in light of the mandatory language of Section 5 of the Arbitration Act, 9 U.S.C. §5,[11/] empowering the court to itself appoint an arbitrator, federal courts have consistently held that arbitration should not be denied "on the ground of impossibility of

following the procedure for designating the arbitrator". Hawaii Teamsters and Workers, Local 996 v. Honolulu Rapid Transit Co. (D. Hawaii, 1972) 343 F.Supp. 419, 425. See also Bethlehem Mines Corp. v. United Mine Workers of America (3d Cir. 1974) 494 F.2d 723, Erving v. Virginia Squires Basketball Club (2d Cir. 1972) 468 F.2d 1064, 1067-8.

B. Arbitration Clause in Master Agreement was never agreed to by Walston

The Trustee lists four reasons (all of which are also allege in the complaint) why, in his opinion, Walston never agreed to the terms of the Realignment Agreements, including the arbitration clause. The truth or falsity of these claims - which are essentially of fraud in the inducement of the contract rather than of the arbitration clause - is a question to be resolved by the arbitrator, not the Court. Prima Paint Corp. v. Flood & Conklin Mfg. Co. (1967) 388 U.S. 395, 403; Robert Lawrence Co. v. Devonshire Fabrics, Inc. (2d Cir. 1959) 271 F.2d 402, cert. granted, 362 U.S. 909, dism'd under R.60, 364 U.S. 801.

Recognizing this rule of law, the Trustee mounts a second and more specific attack by also claiming fraud in the inducement of the arbitration clause itself (which claim would ordinarily be cognizable in a judicial forum), in that had Walston known in advance of the NYSE's alleged financial interest in the salvage of DGF, it would never have agreed to arbitrate disputes arising out of the realignment in the forum of the NYSE. This argument, however, misses

the mark, for the arbitration clause in question does not designate the NYSE as the exclusive forum for arbitration. Even a cursory reading of §10.11 [12/] reveals that the parties intended not to limit arbitration to the NYSE, but rather to arbitrate all of their disputes regardless of the forum. Thus, there is a reference therein to possible arbitration on national securities exchanges other than the NYSE.

III. Whether the various claims in the complaint are arbitrable

A. Bankruptcy Act Claims

The Trustee's contention that he cannot be required to arbitrate the six counts in his complaint which seek pursuant to §702 to recover fraudulent transfers and the one count which seeks, pursuant to §606, to recover voidable preferences is unsupported by the cases [13/] or considerations of public policy. We agree with the defendants that he has confused a statutorily created right - namely the right of a trustee to realize assets for the estate - with the issue of the forum in which those rights are to be asserted. Simply because he has the power to recover fraudulent transfers and voidable preferences does not mean that he can bar the defendants' right to compel arbitration. It is the rule in this Circuit that a trustee in bankruptcy can be compelled to arbitrate claims. See, e.g., Tobin v. Plein (1962) 301 F.2d 378; Schilling v. Canadian Foreign S.S. Co. (S.D.N.Y. 1961) 190 F.Supp. 462. As Judge Feinberg noted in Fallick v.

Kehr (2d Cir. 1966) 369 F.2d 899, 904, there is "nothing in the [Bankruptcy] Act that grants the bankrupt an absolute right to a choice of forum . . ." Indeed, the Act itself has a section dealing with arbitration of controversies "arising in the settlement of the estate", 11 U.S.C. §49, which, as the Court noted, "evinces a receptivity to arbitration". Id. Moreover, the provision in the NYSE constitution for the arbitration of controversies arising out of the "dissolution" of a member corporation is a clear indication of an express intent to arbitrate questions which might arise under the Bankruptcy Act.

The only argument the Trustee can muster in support of his rather vague contention that arbitration would be counter to "public policy" is his fear that somehow an arbitration tribunal would be "friendly" to the defendants. There is no evidence in the record to substantiate such a fear and the Second Circuit rejected this very argument in Fallick, at 904.

B. Securities Laws Claims

In an effort to avoid the rule in this Circuit - first announced in Brown v. Gilligan, Will & Co. (S.D.N.Y. 1968) 287 F.Supp. 766 - that arbitration of securities laws claims is appropriate in suits against stock exchange members, the Trustee urges us to apply instead the rule first announced in Wilko v. Swan (1953) 346 U.S. 427 that

customers and investors may not be compelled to arbitrate such claims. This we decline to do, in the face of the strong authority in this Circuit to the contrary[14/] and the policy considerations underlying the distinction between broker-dealers on the one hand and investors and customers on the other. As Judge Cooper concluded in Brown, supra, the Congressional intent to encourage stock exchange "self-regulation" of the business conduct of its broker-dealers justifies arbitration of securities law disputes between exchange members. Unlike suits involving customers, there is no statutory anti-waiver provision [15 U.S.C. §78cc(a)] rendering void agreements to arbitrate between broker-dealers. Whereas the 1933 and 1934 Acts were specifically intended to protect investors, any protection afforded to broker-dealers is merely incidental. Brown v. Gilligan, Will & Co., supra, at 771-2. One of the primary policy justifications reflected in the Wilko rule voiding arbitration agreements binding customers was to prevent a broker-dealer from taking advantage of the inferior bargaining position of its customers. Such a consideration is absent when arbitration is sought, as here, against a broker-dealer pursuant to an exchange rule. Axelrod & Co. v. Kordich, Victor & Neufeld, supra. Moreover, whereas the Wilko rule derives from two statutory non-waiver provisions - 15 U.S.C. §§ 77n and 78cc(a) - the Brown rule favoring arbitration as between exchange members derives from a specific statutory exception to the non-waiver provisions, §28b of the 1934 Act,

15 U.S.C. §78bb(b). Brown v. Gilligan, Will & Co., supra, at 774-5. Finally, the Trustee's argument that the policies requiring an exchange member to submit to arbitration are inapplicable where the party resisting arbitration has resigned its membership or is in bankruptcy is specifically contradicted by the cases compelling former exchange members to submit to arbitration. Isaacson v. Hayden Stone, Inc., supra, at 930; Osborne & Thurlow v. Hirsch & Co., supra; Cf., Ayres v. Merrill, Lynch, Pierce, Fenner & Smith Inc. (E.D. Pa. 1973) 353 F.Supp. 1084.

IV. Whether the defendants have waived their right to arbitrate

In January 1974, Nella A. Walston, a major shareholder of Walston and the widow of Walston's founder, commenced a shareholder's derivative action in New York Supreme Court against 16 [15/] of the 20 defendants named in the present case (Walston v. duPont Glore Forgan, Index No. 625/74). The complaint, which is only 10 paragraphs long, seeks equitable relief only for alleged violations of state corporate fiduciary laws. Nowhere does it mention the many violations of state and federal securities laws, federal bankruptcy laws and state statutory and common law upon which the instant complaint seeking damages is based, although it does question the basic fairness of the realignment, as does the instant complaint. All of the defendants named in the state action answered on the merits, and four of them filed

third-party counterclaims on grounds different from the issues raised either in the instant action or the Walston complaint. During the eleven month period prior to suspension of discovery in the state action in December, 1974, the defendants never sought arbitration.

On the basis of the foregoing, the Trustee contends that the present movants have waived whatever right to arbitration they may have had. In order to establish a waiver - a finding which is not lightly made in view of the overriding federal policy favoring arbitration[16/] - the party opposing arbitration must show (a) undue delay by the party seeking arbitration, plus (b) inconsistent action by the latter resulting in (c) substantial prejudice to the former. Weight Watchers of Quebec, Ltd. v. Weight Watchers International, Inc. (E.D.N.Y. 1975) 398 F.Supp. 1057, 1059, and cases there cited, at n.5. Plaintiff's failure to establish any one, much less all, of these tests precludes a finding of waiver. The moving defendants have sought to arbitrate here at the earliest available opportunity: at the time they were required to answer or move as against the complaint.[17/] There has been no discovery to date and no motion practice other than the instant motions to stay the proceeding and compel arbitration. Plaintiff has made no effort to show any resultant prejudice, let alone "substantial" prejudice from the failure of some of the defendants to demand arbitration in the state court proceeding. Nor can the failure to demand arbitration in the state case be imputed to the defendants

herein, for even extensive participation in the same case, absent a clear showing of substantial prejudice, will not be deemed a waiver. Carcich v. Rederei A/B Nordie, supra, at 696.[18/] No discovery was taken in the state case by or addressed to the defendants in that case who are the moving parties on this motion. The merits of that case were never litigated and the case has been dormant for over one and one-half years.

Given the above circumstances, we decline to find that the movants have waived their right to arbitration.

NYSE Motion

Although the NYSE is admittedly not a party to the three arbitration agreements successfully invoked by the Perot group, it nevertheless has persuaded us that the action as to it must be stayed as well so as to avoid duplicative effort, the possibility of inconsistent results and the potential for unnecessary waste of the estate's limited assets. If the Exchange is correct that the arbitration will resolve many of the issues raised by this action, proceeding with the action while arbitration is pending would constitute waste of the estate and of judicial time as well. On the other hand, if the Exchange is wrong in that regard, nothing will have been lost. In the event that the passage of time under a stay might prejudice the estate - as in the loss of evidence - the Court could, upon a proper showing of

necessity, condition its stay to permit selective discovery to go forward.[19/]

CONCLUSION

The motion for a stay and to compel arbitration, filed by the Perot group is granted. So as to avoid even the appearance of bias which designation of the Amex might engender, the parties are directed to agree among themselves upon the appropriate arbitration tribunal, in default of which, the Court will, in accordance with the spirit of the Amex constitution, designate the American Arbitration Association. The motion of the NYSE to stay the proceeding as to it pending arbitration is also granted. In the exercise of the Court's inherent power to control its own docket, the action is stayed as to the four non-moving defendants as well.

Settle order on notice.

SO ORDERED.

Dated: New York, New York
April 12, 1976.

WHITMAN KNAPP, U.S.D.J.

FOOTNOTES

1/ The only defendants who have not joined in this motion are Douglas DeTata, John Doughty, Allan Blair and D. Tipp Cullen.

2/ Walston was declared a bankrupt on May 29, 1974.

3/ Article VIII, Section 1 of the NYSE Constitution provides:

> "Any controversy between parties who are members, allied members, member firms or member corporations shall, at the instance of any such party, and any controversy between a non-member and a member or allied member or member firm or member corporation arising out of the business of such member, allied member, member firm or member corporation, or the dissolution of a member firm or member corporation, shall, at the instance of such non-member, be submitted for arbitration, in accordance with the provisions of the Constitution and the rules of the Board of Directors." (Emphasis supplied)

4/ Article VIII, Section 1 of the Amex Constitution provides:

> "Members, member firms, partners of member firms, member corporations and officers of member corporations shall arbitrate all controversies arising in connection with their business between or among themselves or between them and their customers as required by any customer's agreement or, in the absence of a written agreement, if the customer chooses to arbitrate." (Emphasis supplied)

5/ Article 10.11 of the Master Agreement provides as follows:

> "Arbitration. duPont and Walston agreed to submit any dispute arising under this Agreement and the Ancillary Agreements [which together are the Realignment Agreements] or with respect to any of the transactions contemplated thereby to arbitration,

in accordance with the provisions of the Constitution of the NYSE and the Rules of the NYSE, except that disputes under the Clearing Agreement relating to transactions executed on an exchange other than on the NYSE, which has in its constitution or rules provisions compelling arbitration among members thereof, shall be submitted to arbitration in accordance with the Constitution and Rules of such other exchange."

6/ During the period covered by the complaint herein:

(a) Walston was a member corporation of both the NYSE and the Amex;

(b) DGF Inc. was a member corporation of both the NYSE and the Amex;

(c) Defendants Meyerson, D. J. Cullen, Fleming, Thomson, Cox, DeTata, Doughty, Blair and D. T. Cullen were allied members of both the NYSE and the Amex;

(d) Defendant Hart was an allied member of the NYSE; and

(e) Defendant Stauffer was an allied member of the Amex.

The 7 non-member defendants (PHM & Co., H. Ross Perot, William Gayden, Margot Perot, Electronic Data Systems Corp., E. D. Systems Corp. and Charleston Investment Co.) are also entitled at their election pursuant to Article VIII of the NYSE constitution to compel arbitration by virtue of the fact that the complaint herein states a "controversy between a non-member and a member corporation [Walston] . . . arising out of the business of such . . . member corporation . . ." Axelrod & Co. v. Kordich, Victor & Neufeld (2d Cir. 1971) 451 F.2d 838, 841.

Nor does termination of an exchange membership end the duty to arbitrate controversies predicated upon business relationships between parties who were exchange members at the time the obligation was created. Isaacson v. Hayden Stone, Inc. (S.D.N.Y. 1970) 319 F.Supp. 929.

7/ Despite the non-executory nature of the contracts here involved, the duty to arbitrate survives their completion, termination or breach. Isaacson v. Hayden Stone, Inc., supra, at 930.

8/ See Memorandum in Support of defendants' Motion for Stay of Action Pending Required Arbitration, p. 18.

9/ Commonwealth Coatings Corp. v. Continental Casualty (1968) 393 U.S. 145, 150.

10/ Furthermore, this provision for an alternative forum belies the Trustee's unsupported contention that the identity of the original arbitration tribunal (NYSE or Amex) was so central to the agreement to arbitrate that its unavailability destroyes the obligation to arbitrate in its entirety.

11/ ". . . upon the application of either party to the controversy the court shall designate and appoint an arbitrator . . . who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein. . . ." (emphasis supplied)

12/ See n. 5, above.

13/ The cases cited by the Trustee are inapposite, for they all arose under a specific statutory scheme expressing an absolute and unqualified right to have rights arising thereunder adjudicated exclusively by a court of law. No such policy is evidenced in the Bankruptcy Act and the law in this Circuit concerning bankruptcy matters is to the contrary.

14/ See also Coenen v. R. W. Pressprich & Co., Inc., supra; Axelrod & Co. v. Kordich, Victor & Neufeld, supra; Rust v. Drexel Firestone Inc. (S.D.N.Y. 1972) 352 F.Supp. 715; Legg, Mason & Co. v, Mackall & Coe, Inc., supra; Reich & Co. v. Imperial Investment Corp. (S.D.N.Y. 1972) CCH Fed. Sec. Rep. ¶93,437 (not officially reported).

15/ Eleven of whom are movants herein.

16/ Carcich v. Rederei A/B Nordie, supra, at 696.

17/ Several stipulations extending the defendants' time to answer or move were entered into by counsel, but they do not rise to the level of a waiver. Macchiavelli v. Shearson Hammill & Co., Inc. (E.D. Calif. 1974) 384 F.Supp. 21, 26.

18/ As the court thereobserved,

> "Yet the law is clear that such participation, standing alone, does not constitute a waiver, Chatham Shipping Co. v. Fertex Steamship Corp., 352 F.2d 291, 293 (2d Cir. 1965) (filing complaint not waiver); Reynolds Jamaica Mines, Ltd. v. La Societe Navale Caennaise, 239 F.2d 689 (4th Cir. 1956) (asserting counterclaim not waiver); Rootes Motors, Inc. v. SS Carina, 1964 A.M.C. 2754 (S.D.N.Y. 1964) (filing answer without mentioning arbitration not waiver), for there is an overriding federal policy favoring arbitration. Waiver, therefore, is not to be lightly inferred, and mere delay in seeking a stay of the proceedings without some resultant prejudice to a party, Kulukundis, supra, cannot carry the day." (emphasis supplied and footnotes omitted)

The court in Hiltie, Inc. v. Oldach (1st Cir. 1968) 392 F.2d 368, relying on the identical rule, recited numerous examples of extensive participation in cases where claims of waiver were rejected:

> "The cases demonstrate with marked consistency the reluctance of courts to find default despite substantial delay and intervening proceedings. Robert Lawrence Co. v. Devonshire Fabrics, Inc. (2d Cir. 1959) 271 F.2d 402, cert. granted, 362 U.S. 909, dismissed under Rule 60, 364 U.S. 801 (1960) (9 month delay; interim settlement discussions; disputed goods tested; held no default); Almacenes Fernandez, S.A. v. Golodetz (2d Cir. 1945) 148 F.2d 625 (6 month delay; 7 third party defendants joined; held: no default); Kulukundis Shipping Co. v. Amtorg Trading Corp. (2d Cir. 1942) 126 F.2d 978 (9 month delay; answer amended two months before trial to assert right to arbitration; 'no important interveneing steps *** taken'; held: no default); Lumbermen's Mut. Cas. Co. v. Borden Co. (S.D.N.Y. 1967) 268 F.Supp. 303 (motion for stay of proceedings delayed two years; no direct dispute between plaintiff and movant until some 21 months after suit initiated; answer never filed; discovery initiated by plaintiff; held: no default)." (392 F.2d at 372, fn. 9).

19/ Indeed, such a procedure has already been adapted in the case with respect to an elderly and sick non-party witness residing in Florida.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated, Plaintiff, -against- H. ROSS PEROT, et al., Defendants.	:	75 Civ. 3214 (W.K.) NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE that an Order in the form annexed hereto will be presented for settlement to the Honorable Whitman Knapp, United States District Judge, at his Chambers, U.S. Courthouse, Foley Square, New York, New York at 10:00 a.m. on the 30th day of April, 1976.

Dated: New York, New York
April 27, 1976

WEIL, GOTSHAL & MANGES

By /s/Peter Gruenberger
(A Member of the Firm)
Attorneys for Defendants
H. Ross Perot, duPont Glore Forgan Incorporated, Morton H. Meyerson, Milledge A. Hart, III and PHM & Co.
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

and

Submitted on behalf of Defendants Electronic Data Systems Corporation E. D. Systems Corporation, William K. Gayden, Margot Perot, Mervin L. Stauffer, Charleston Investment Company, Daniel J. Cullen, William D. Fleming, George T. Thomson, Charles W. Cox, Douglas E. DeTata, John J. Doughty, Allan Blair, D. Tipp Cullen and the New York Stock Exchange, Inc.

TO: HUGHES, HUBBARD & REED
Attorneys for Plaintiff
One Wall Street
New York, New York 10005
(212) 943-6500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Plaintiff,

-against-

H. ROSS PEROT, et al.,

Defendants.

75 Civ. 3214 (W.K.)

ORDER

A motion having been made by the defendants H. Ross Perot, Electronic Data Systems Corporation, duPont Glore Forgan Incorporated, William K. Gayden, Morton H. Meyerson, Milledge A. Hart, III, Margot Perot, Mervin L. Stauffer, PHM & Co., Charleston Investment Company, E. D. Systems Corporation, Daniel J. Cullen, William D. Fleming, George T. Thomson and Charles W. Cox, for an order staying the action and all proceedings therein pending any arbitration of the claims asserted against them in the action, and a motion having been made by the defendant New York Stock Exchange, Inc. (the "Exchange") that the action be stayed as to it pending any arbitration of the claims asserted against the above moving defendants; briefs and affidavits having been exchanged and filed; oral argument having been had; the Court having duly deliberated and having issued its opinion and order filed April 14, 1976, and good cause being shown;

It is hereby ORDERED as follows:

1. The motion of the defendants H. Ross Perot, Electronic Data Systems Corporation, duPont Glore Forgan Incorporated, William K. Gayden, Morton H. Meyerson, Milledge A. Hart, III, Margot Perot, Mervin L. Stauffer, PHM & Co., Charleston Investment Company, E. D. Systems Corporation, Daniel J. Cullen, William D. Fleming, George T. Thomson and Charles W. Cox that this action and all proceedings herein be stayed pending any arbitration of the claims asserted against them herein is granted in all respects.

2. The motion of the Exchange that this action and all proceedings herein be stayed as to it pending any arbitration of the claims asserted in this action is granted in all respects. If the plaintiff or the Exchange or any of the individuals mentioned in paragraph 4 below makes a proper showing that passage of time under the stay of action against the Exchange might prejudice any such party -- as in the case of loss of evidence -- the Court could condition such stay so as to permit selective discovery by such party against the other or against third parties who are not parties to any such arbitration.

3. The action and all proceedings herein shall be and the same hereby are stayed pending any arbitration of the claims asserted in this action, and this action be and the same hereby

is placed on this Court's suspense calendar until further notice to all parties.

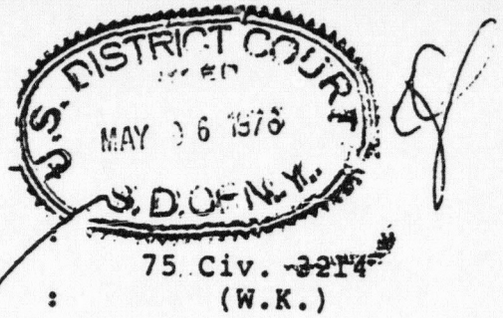
4. In the exercise of the Court's discretion and inherent power to control its own docket, this action is stayed as to the defendants Douglas E. DeTata, John J. Doughty, Allan Blair and D. Tipp Cullen pending any arbitratrion as aforesaid.

5. In the event that any such arbitration is commenced, the parties are directed to agree among themselves upon the appropriate arbitration tribunal, in default of which the Court will designate the American Arbitration Association as the arbitration tribunal.

Dated: New York, New York
April , 1976

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Plaintiff,

- against -

H. ROSS PEROT, et al.,

Defendants.

75 Civ. ~~3214~~ (W.K.)

COUNTER-ORDER

A motion having been made by the defendants H. Ross Perot, Electronic Data Systems Corporation, duPont Glore Forgan Incorporated, William K. Gayden, Morton H. Meyerson, Milledge A. Hart, III, Margot Perot, Mervin L. Stauffer, PHM & Co., Charleston Investment Company, E. D. Systems Corporation, Daniel J. Cullen, William D. Fleming, George T. Thomson and Charles W. Cox, for an order pursuant to 9 U.S.C. § 3 staying the trial of the action until arbitration of the claims asserted against them in the action has been had, and a motion having been made by the defendant New York Stock Exchange, Inc. (the "Exchange"), for an order pursuant to the inherent powers of the court to control its docket that the trial of the action be stayed as to it until arbitration of the claims asserted against the above moving defendants has been had; briefs and affidavits having been exchanged and filed; oral argument having been had; the Court having duly deliberated and having issued its opinion and order filed April 14, 1976:

It is hereby ORDERED as follows:

1. The motion of the defendants H. Ross Perot, Electronic Data Systems Corporation, duPont Glore Forgan

MICROFILM MAY 6 1978

Incorporated, William K. Gayden, Morton H. Meyerson, Milledge A. Hart, III, Margot Perot, Mervin L. Stauffer, PHM & Co., Charleston Investment Company, E. D. Systems Corporation, Daniel J. Cullen, William D. Fleming, George T. Thomson and Charles W. Cox that the trial of this action be stayed until arbitration of the claims asserted against them has been had is granted, provided, however, that plaintiff may apply to the court for permission to use the pretrial discovery procedures of the Federal Rules of Civil Procedure where circumstances warrant.

2. The motion of the Exchange that the trial of this action be stayed as to it pending any arbitration of the claims asserted in this action is granted, provided, however, that plaintiff may apply to the court for permission to use the pretrial discovery procedures of the Federal Rules of Civil Procedure where circumstances warrant.

3. In the exercise of the Court's discretion and inherent power to control its own docket, the trial of this action is stayed as to the defendants Douglas E. DeTata, John J. Doughty, Allan Blair and D. Tipp Cullen pending arbitration as aforesaid.

4. ~~In the event that plaintiff elects to arbitrate,~~ The parties are directed to agree among themselves upon the appropriate arbitration tribunal, in default of which the Court will designate the American Arbitration Association as the arbitration tribunal.

Dated: New York, New York
April 30, 1976

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated, Plaintiff, -against- H. ROSS PEROT, ELECTRONIC DATA SYSTEMS CORPORATION, duPONT GLORE FORGAN INCORPORATED, WILLIAM K. GAYDEN, MORTON H. MEYERSON, MILLEDGE A. HART, III, MARGOT PEROT, MERVIN L. STAUFFER, PHM & CO., CHARLESTON INVESTMENT COMPANY, E.D. SYSTEMS CORPORATION, NEW YORK STOCK EXCHANGE, INC., DANIEL J. CULLEN, WILLIAM D. FLEMING, GEORGE T. THOMSON, CHARLES W. COX, DOUGLAS E. DeTATA, JOHN J. DOUGHTY, ALLAN BLAIR, and D. TIPP CULLEN, Defendants.	NOTICE OF APPEAL 75 Civ. 3214 (W.K.)

Notice is hereby given that plaintiff, Winthrop J. Allegaert, as Trustee of duPont Walston Incorporated, hereby appeals to the United States Court of Appeals for the Second Circuit from each and every part of the order of the Honorable Whitman Knapp entered and filed in this action on April 14, 1976 and from each and every part of the order of the Honorable Whitman Knapp entered and filed in this action on May 6, 1976.

Dated: New York, New York
May 12, 1976

HUGHES HUBBARD & REED

By George A. Davidson
A Member of the Firm
Attorneys for Plaintiff
One Wall Street
New York, New York 10005

To:

Raymond F. Burghardt, Clerk
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

A. Daniel Fusaro, Clerk
United States Court of Appeals
Second Circuit
United States Courthouse
Foley Square
New York, New York 10007

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One Chase Manhattan Plaza
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U.S. DISTRICT COURT
FILED
MAY 14 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINTHROP J. ALLEGAERT, as Trustee of duPont Walston Incorporated,

Plaintiff,

- against -

H. ROSS PEROT, et al.,

Defendants.

MEMORANDUM AND ORDER

75 Civ. 3214

KNAPP, D.J.

The Court has signed the Order submitted by plaintiff. In so doing it necessarily overruled the objections noted in defense counsel's letter of April 30, 1976. The Court wishes to make clear that it does not intend to authorize the unlimited discovery suggested in said letter. It does not consider this Order to be any broader than the one submitted by defendant. The Court simply prefers the language employed.

The case is placed on the suspense calendar pending the anticipated arbitration.

SO ORDERED.

Dated: New York, New York

May 10, 1976.

WHITMAN KNAPP U.S.D.J.

MICROFILM
MAY 14 1976